THE NEW
Natura Brevium,
Of the most Reverend
JUDGE
Mr. *ANTHONY FITZ-HERBERT.*

Corrected and Revised by the AUTHOR.

With a perfect TABLE of the most Material things contained therein,

Composed by

WILLIAM RASTALL.

Whereunto is added

The Authorities in Law, and some other Cases and Notes collected by the Translator out of the Year-Books and Abridgments.

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BIBLIOTHECA REGIA

THE PREFACE;

Compoſed by the Reverend Judge Mr. *Anthony Fitz-Herbert.*

IN every Art and Science, there are certain Rules and Foundations to which a man ought to give credit, and which he cannot deny. In like manner there are divers Maxims and Fundamentals in the knowledge of the Common Laws of the Land, which a Man ought for to believe very neceſſary for thoſe who will underſtand the ſame Law, eſpecially at the beginning of their ſtudies; for upon thoſe Fundamentals the whole Law doth depend. For which purpoſe, in time paſt there was compoſed a very profitable Book, cald, *The Regiſter*, which doth contain ſundry Principals, by which he muſt be well inſtructed who would ſtudy the Law. And alſo for that purpoſe was there compoſed by a Learned Man, a

Book called *Natura Brevium*, which Book doth declare and ſet forth the Diverſities and Natures of many Original Writs with their Proces; which Book helped much to the underſtanding, not onely of the Regiſter, but alſo of the Law of the Land. But becauſe of late time, that Book hath been tranſlated into the Engliſh Tongue, and many things are therein, which are not according to the Law of the Land; and many other things are omitted, which are very profitable and neceſſary for the underſtanding of the Law. For that cauſe is this Work compoſed and publiſhed; wherein, if there be any thing againſt the opinion of the Sages who have the Adminiſtration of the Laws. The requeſt of him who hath taken the pains to make this Treatiſe, is, That they would correct and amend the ſame, as they ſhall ſeem good according to the Law.

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FITZ-HERBERT HIS NATURA BREVIUM.

Writ of Right Patent.

A THE natures of the Original Writs, are to be ſhewed and declared, according to the manner and form as they are in order written, and ſet down in the Regiſter, which ſhall be expreſſed and ſpecified in form following.

And firſt, becauſe the *Writ of Right Patent*, is in its nature the higheſt Writ in Law: The nature of that Writ ſhall be firſt declared, and where it lieth.

B This Writ ought to be brought of Lands or Tenements, and not of Advowſon, or of Common. And lieth onely for him who hath an eſtate in Fee-ſimple, and not for him who hath a leſſer eſtate, as Tenant in Tail, Tenant in Frank-marriage, or Tenant for life. For theſe Tenants ſhall not have a Writ of Right Patent. 40 *Ed.* 3. 8.

C And this Writ lieth properly where a man is ſeiſed in Fee-ſimple, and another recovereth the Land againſt him by default in a *Precipe quod reddat*: Now he who hath loſt by default, ought to ſue this Writ. Or if a man ſeiſed in Fee-ſimple die ſeiſed of ſuch Eſtate, and a ſtranger doth abate and entreth into the Land and deforceth the Heir; the Heir may ſue this Writ againſt the Tenant of the Freehold of the ſame Land; or an Aſſiſe of *Mortdanceſter*. 11 *Aſſ.* 17. *Per Curiam*; a man recovered againſt the Heir by default, and he brought a *Mortdanceſter*.

D And this Writ ought to be brought againſt him who hath a Freehold at leaſt in the Land, and not againſt Tenants for

years, Tenants by Statute Merchant, Tenants by Elegit, nor Tenants by Statute Staple, but it ought to be brought againſt thoſe Tenants who have an eſtate in Fee-ſimple in the Lands, or an Eſtate ſole, or for Term of life at the leaſt.

And this Writ is always Patent, and not cloſe as other F Writs are. And if the Lands be holden of other perſons then of the King, or of the Queen, then this Writ ſhall be directed unto the Lord himſelf of whom the Lands or Tenements are ſo holden, if the Lord be not out of the Realm, for then it ſhall be directed unto the Lords Baily; and then the Chancellor of *England* ought to be certified thereof. And if a man be elected Biſhop, and a Writ of Right Patent is to be ſued in the Court of the Manor of the ſaid Biſhop, the Writ ſhall be directed unto the Bailies of the Eſſite, and not unto the Eſſite himſelf. And this Writ is as a Commiſſion unto the Lord, or unto the Baily of the Manor, that they ſhall do Right. And the form of the Writ directed unto the Lord himſelf, is ſuch.

The K. &c. to H. *Earl of* Lancaſter, *Greeting. We command* G *thee, that without delay, thou doſt right to* A. *of* B. *of one Meſſuage and twenty Acres of Land, with the appurtenances in which he claims to hold of thee by free ſervice of one penny by the year for all ſervice, of which* W. *of* T. *deforced him, and unleſs thou do it, let the Sheriff of* Nottingham *do it, that we may hear no more clamor thereupon for defect of Right. Witneſs, &c.*

And if the Lord be out of the Realm, then the form of H the Writ which ſhall be directed unto his Bailies, ſhall be ſuch.

The K. &c. to the Bailies of H. *Earl of* Derby, *of his Honor of* P. *in the County of* Derby, *Greeting. We command you, that without delay, full Right you do to* A. *of* B. *of one Meſſuage and twenty Acres of Land, with the appurtenances in* L. *which he claims to hold of your ſaid Lord by free ſervice, doing ſuit to the Court of your Lord aforeſaid, of the Honor aforeſaid, in the County aforeſaid, from three weeks to three weeks for all ſervice, as aboveſaid.*

And by that it appeareth, that in a Writ of Right Patent I he expreſs by what ſervices the Lands are holden, *&c.* And if the Lands be holden of the King, or of the Queen, as of an Honor; or in Burgage, then the Writ ſhall be directed unto the Kings or Queens Bailies, and the Writ ſhall be ſuch.

Henry, *By the grace of God, &c. To his Bailies of* Lincoln, *Greeting,*

Greeting. We command you, that without delay, full right you do to A. *of* B. *of one Meſſuage, with the appurtenances in* Lincoln, *which he claims to hold of us by free ſervice of one penny by the year, for all ſervice; of which* W. *of* B. *deforces him, that we may hear no more clamor thereupon for defect of right, &c.*

K And if a man ſue a Writ of Right Patent of Lands or Tenements, which are holden by a Knights Fee, then the form of the Writ ſhall be, *Of one Meſſuage and ten Acres of Land, &c. which he claims to hold by the ſervice of one Knights Fee for all ſervice.*

L And the Writ of Right lieth, of a paſſage over the Water of *Thames.* And of Paſture for a hundred ſheep, and of the Rent of one pound of Ginger. Thus, *Of one Meſſuage ten acres of Land, nine ſhillings rent, and paſſage over the Water of* Thames, *and paſture for an hundred ſheep, with the appurtenances in* W. *and of the rent of one pound of Ginger, one pound of Cinamon, one Roſe, one pair of gilt Spurs, and of the third part of one Garden, with the appurtenances in* N. *which he claims to hold of us, by the ſervice of finding us with his participants, five ſhips for our paſſage at our command for all ſervice, &c.*

A And if the Lands of any Lord be in the King for the non-age of the heir; and a Writ of Right is to be brought in the Court of the Manor where the King hath committed the wardſhip of the Lands to another. The Writ of Right ſhall be directed unto the Bailies of the Gardian, to whom it is committed, or unto the Gardian himſelf, if he hath the Land in ward in his own right, and by reaſon of the ſeigniory that the heir is in his ward; and the forms of the Writs in the Regiſter, are thus. *The K, &c. to the Bailies of the gard' of the Land, and heir of* A. *of* B Or thus, *To the Bailies of the gard' of the Land of* A. *of* B. And this Writ is where the Gardian hath onely the wardſhip of the Land, and not of the Heir *&c.* And unto the Gardian himſelf, the Writ is, *The K. &c. to the Gardian of the Land, and Heir of* B: *Greeting. We command thee, &c. which he claims to hold of the foreſaid heir, &c.* And if the heir hath no Court for the poorneſs of the Land, that it is of ſo ſmall value; then the Writ ſhall be directed unto the chief Lord, as *Chief Lord*, and not as Gardian, and then the Writ ſhall ſay: *And which of him he claims to hold, &c.* and ſhall not ſay as Gardian. [2]

And it appeareth that a man ſhall have a Writ of Right of a Knights Fee; and the Writ ſhall be ſuch.

The K &c. to A. of B. Greeting. We command thee that, &c. B
W, *&c. of the service of one Knights Fee, with the appurtenances in* W. *which he claims to hold, &c. by the service of one pair of gilt Spurs, for all service, &c. or by the service of finding an Horsman or Footman, to go with thee in the army of* Wales, *at thy expence and cost, &c. for all service.* Or thus, *by free service, by carrying thy Writs at thy expence and cost within the County, &c. for all service.*

And there is an order set in the Register, when a man de- C
mandeth divers parcels of Land in his Writ which are of divers natures, which parcel shall be first specified in the Writ, and what parcel shall be next unto that, and then what parcel shall be next to that, and so of all the parcels; and that appeareth by the two Verses following,

Suagium, um, lendinum, lumbare, dinum, ra, tum, tura. cus, ra,
Mos toft mo co gar ter pra pas bos bine mora
ria, cus, tum, carta, ditus,
Junca moris alve pis red sellare priora.

8 Ass. 24. And if a man in his Writ will demand twenty houses, and ten acres of Land, and ten acres of Meadow, and ten acres of pasture, and divers other parcels, and afterwards in the same Writ he will demand the moity or the third part of one house, or of one acre of Land, or of Meadow, or of pasture; Then the form of the Writ is to put in the beginning of the Writ the whole parcel; and in the end of the Writ the moity, or the third part, *&c.* Thus, *That full right, &c. of one Messuage, one Mill, one Garden, the moity of one Messuage, of one acre of Land with the appurtenances, excepting one acre of Land in* N, *&c.* So as the exception shall always be in the end of the demand.

And a Writ of Right may be brought against divers Te- D
nants who hold their Lands severally, and then the form of the Writ is, *The King to* A. *of* B, *&c. We command thee that, &c. full right thou dost to* A. *of twenty acres of Land with the appurtenance in* N. *which he claims, &c. whereof* F. *ten acres, and* S. *three acres, and* C. *seven acres of Land deforce him.* And so the word [Land] shall be in the end to him that shall be supposed last deforcer, *&c.*

And if a Writ of Right be brought in the Court of any E
Bishop, or Abbot, it shall be then directed to the same Bishop, thus, *The K. &c. to the venerable Father in Christ,* William, *by the same grace, Archb. of* Canterbury, *of all* England, *Primate,*

Primate, Greeting. We command you that without delay, &c. which he claims to hold of you by free service, &c.

And if it be directed unto an Abbot, then the Writ shall say, *Quod clamat tenere de te, &c.*

And if in the time of the Vacation of any Bishoprick a Writ of Right shall be brought in the Court of any Lands which are of the Bishoprick, which are in the Kings hands, by reason of the Vacation of the Bishoprick, then the Writ of Right shall be directed unto the Kings Baily, or unto the Baily of him who is the Bishop Elect, and the form of the Writ is such. *The K. &c. to the Bailies of the Archbishoprick of York of* C. *Greeting.* Or thus, *The K. &c. to the Bailies of* K. *elect of* Lincoln *of* H. *Greeting. We command thee, &c. which he claims to hold of the foresaid Archbishop.* Or thus, if it be directed unto the Bailies of the Bishop Elect, *which he claims to hold of the foresaid Lord by service, &c.*

F But the Lord may give Licence unto his Tenant to sue in Writ of Right in the Kings Court, or the Common Pleas before the Justices, and that as well after the Writ purchased and returned in the Common Pleas, as before the Writ purchased and sued: And the form of the Writ when it shall be sued in the Common Pleas by Licence of the Lord shall be such. *The K. to the Sheriff, &c. Command* A. *that justly, &c. he render to* C. *one Messuage, with the appurtenances in* N. *which he claims to be his right and inheritance, and whereof he complains that* A. *foresaid, him injustly deforces; and unless he do it, and the foresaid* C. *shall secure thee his clamor to prosec. then summon by good summons the foresaid* A. *that he be before the Justices of, &c. at* Westm. *in the quind' of the holy Trinity, to shew why he did it not, and have there the sum and this Writ* T, *&c. because* I. *the chief Lord of the Fee has remitted to us thereupon his Court.* And so this clause shall be put in the Writ after the *Teste, &c.* and if this clause be omitted, and the Lord after the purchase of the Writ, send his Letter to the King, that he is contented therewith, it is sufficient.

And if such clause, *Because the Lord hath remitted his Court,* [3] were in the Writ, it is not material if there were not any Letter of the Lord in the Chancery, proving his assent or not. And the form of the Letter of Licence, which shall be certified unto the King, is thus.

To the most excellent Prince, Lord H. *by the grace of God King of* England, *Lord of* Ireland, *and Duke of* Aquitain *the*

Biſhop of Durham, *health in him, by whom Kings reign, and Princes bear Dominion, becauſe* K. *of* S. *in your Court before the Juſtices of the Bench, by the Writ of Right* W. *of one Meſſuage, with the appurtenances in* L. *which is held of us, our Licence mediating purpoſes to implead, to your Highneſs Royal, by tenor of theſe preſents, We intimate that we have our Court to you thereupon this time remitted, ſaving to us otherwiſe the Right of our Seigniory in ſuch caſe, if it ſhall happen. In teſtimony of which, theſe our Letters, we have cauſed to be made Patent. Given at* London, *the day, year, &c.*

But if the Tenant of any Lord ſue ſuch a Writ of Right in the Kings Court, without ſuch Letter, and recover, it ſeemeth the Recovery is good, and the Lord ſhall not void the ſame, nor the Tenant. Alſo it ſeemeth to ſtand with reaſon, That if a man hold of any Lord, as of Seigniory in groſs, which is not any Manor, for which Seigniory he cannot keep any Court, That then the Tenant ought to ſue ſuch Writ as before in the Kings Court, and that the Lord ſhall not have action or other means to annul this act, becauſe he hath not any Court to hold plea for that there; in the end of the Writ may be theſe words, Becauſe the Lord hath remitted his Court. But if the Tenant will ſue forth a Writ of *Præcipe in capite* in the Kings Court, for ſuch Lands as are holden of another Lord, then the Lord ſhall have a Writ out of the Chancery directed unto the Juſtices of the Common Pleas, commanding them, that if it doth not appear unto them, That the Lands are holden of the King, but of another; that they ſhall proceed no farther in that plea; for by this Writ, the plea ſuppoſeth the Lands to be holden of the King, and therefore he and his heirs ſhall be concluded againſt the King for the tenure, and the ſame ſhall be prejudicial unto the Lord, of whom the Lands are holden: But by the other Writ, he doth not ſuppoſe any Tenure in the Writ, and therefore their diverſity is great. *Tamen quære.*

And if a man ſue a Writ of Right, directed unto the Lord, of whom the Lands are holden, and he will not hold his Court to proceed upon the Writ, then the Demandant in the Writ of Right ſhall have a Writ directed unto the Lord, commanding him to hold his Court, *&c.* and if he will not receive the Writ, nor do Right unto him, he may ſue forth a Writ commanding him to do Right, and thereupon he may have an *Alias*, and a *Pluries*, and *Attachment*, and the form of the Writ of *Attachment* is ſuch. 7[illegible]

The K. to the Sheriff, &c. If A. secure thee, &c. then put, &c. B *that he be, &c. to answer as well to us, as the foresaid* A. *why when to the same* B. *by our Writ of Right we commanded, that without delay, full Right he should do to the foresaid* A. *of one Messuage, with the Appurtenances in* N. *of which* T. *deforces him; the same* B. *our command in this part little regarding our Writ aforesaid in favor of the foresaid* T. *maliciously suppressed.* Or thus, *Our foresaid Writ to receive, and his Court to hold, and to the same* A. *in the premisses justice to do, refused, to the contempt of us and of our foresaid command, and to the grievous loss of him* A. *and manifest peril of disheriting, and have, &c.* And upon that, if the Defendant appear, he shall be put to answer, *&c.*

F But if the Lord of the Court hold his Court, but the Lord or the Bailies, or Officer, will not do him right, or delay him to have right, or to make proces. *&c.* Then the Demandant may shew unto the Sheriff of the County, how he is delayed, *&c.* and pray the Sheriff to award such a Precept or Writ which is called a *Tolt*, directed to his Bailies by his Precept, to remove the Plea before him into his County, and upon that, the Sheriff ought to award such a Precept to his Baily, *&c.* and to go unto the Lords Court, and there remove the matter before the Sheriff in his County, and the form Precept is such.

Robert A. *Sheriff of* Norfolk, *to* Edmund C. *Baily of our Lord the King, of his Dutchy of* Lancaster, *of* F. *Greeting. Because from the Plaint of* John B. *at my County, to wit, Munday last, &c. the year, &c. at* Norwich, *in the Shire-house held, personally coming, I received, that though he the Writ of our Lord the King of Right Patent to the Bail of our said Lord the King of his Dutchy of* Lancaster *of* F. *in my said County directed, of that. That they full right should do to the said* I. *of* B. *of the Manor of* F. *with the appurtenances of which* I. S. *deforces him, had brought to* I. P. *and* I. C. *Baily of our said Lord the King of his Dutchy foresaid of* F. *foresaid, yet for that that the said Bailies favor the said* I. S. *in that part and full right according to the exigency of the same Writ as yet have deferred to do. To thee of the part of our Lord the King, I command, firmly injoyning that in thy proper person thou come to the Court of our Lord the King of his Dutchy foresaid of* F. *And the Plea which is there betwixt the foresaid* I. B. *and* I. S. *by the said Writ in my County next, to be held remove, and summon by good summons the foresaid* I. S. *that he*

be at my County of Norfolk, *Munday next, to come at* N. *in the Shire-house to be held, the foresaid* I. B. *therefore to answer, and have there the plea foresaid, the summons and this precept. Given in my County at* Norfolk, *in the Shire house, Munday the last, &c. the year abovesaid.*

And by this it appeareth, That the Demandant may remove the matter, out of the Lords Court into the County Court: And it seems reasonable, That the Tenant may also remove the matter by a *Tolt* made by the Sheriff, supposing that the Bailies of the Court do favor the Demandant in the matter. *Tamen Quære*, for the Rule in the Register is, That the Tenant may remove the plea out of the Lords Court for good cause, before the Justices into the Common Pleas, but the Demandant cannot so do, because he may have a *Tolt* from the Sheriff, to remove it out of the Lords Court into the County Court. [4]

And when it is in the County, he may remove it by a *Recordare* before the Justices in the Common Pleas; and by this rule it seems, That the Tenant cannot remove the Plea by a *Tolt* out of the Lords Court into the County, but he ought to remove it into the Common Pleas, by a *Recordare, &c.* and that for good cause shewed in the Writ; and the Writ of *Recordare* is such. A

The K. to the Sheriff, &c Greeting. We command thee, that taking with thee, four discreet and lawful Knights of thy County, in thy proper person thou come to the Court of A. *of* B. *And in that full Court cause to be recorded, the plea which is in the same Court by our Writ of Right, betwixt* W. *Demandant, and* S. *Tenant, of one Messuage with the appurtenances in* B. *and that that Record thou have before the Justices at* Westminster, *in the fifteenth of St.* Michael, *under thy Seal, and the Seal of four legal men of the same Court, who were present at the same Record, and that to the parties, the same day, thou dost prefix, that then there they be in that plea, as just it shall be to proceed, and have thou there the names of the four men, and this Writ. Witness, &c.* And in the end of the Writ of *Recordare*, the cause of the removal shall be put in thus. *Because the Messuage of the foresaid* F. *to the Baily of the Court foresaid, who holds the Pleas of the same Court, as Cozen and next heir of the foresaid* W *ought to descend, after the death of the same* F. *If the same* W. *without heir of his body, had died, and the same* W. *that against the foresaid* F. *had detained; for which, the same Baily favors*

favors the same W *in his plea aforesaid, as is said, let execution of this Writ be made, if the Cause be true, and the aforesaid* S. *requires this, and otherwise not.*

B And there are many other causes put in the Register, of Remover of this plea into the Common Pleas, at the Sute of the Tenant. As if the Lord take upon him for to maintain the matter to have part of the Land; or if the Tenant alleages Battardy, or plead a forein plea, or joyn the mise upon the Grand Assise, *&c.* And when the Demandant hath removed the plea by *Tolt* into the County, then the Demandant may remove the same into the Common Pleas by a *Pone*, without expressing any cause in the *Pone*; but the Tenant cannot remove it, without a cause be expressed in the *Pone*.

v. 3 *H.* 4. 14. 12 *H.* 4. 13. & 17. 1 *H.* 7. 30. 1. 2 *Ph.* & *Ma. Dyer* 111.

C And it is a Rule, That a *Recordare* is not given to remove any plea in a Writ of Right, but for the Tenant. But *Pone* is given for the Demandant, but that ought to be out of the County Court, and the form of the *Pone* for the Demandant is such.

The K. to the Sheriff, Greeting. Put at the Petition of the Demandant before the Justices at Westminster, *in the Oct. of the Holy Trinity next to come, the plea which is in thy County by our Writ of Right, betwixt* A. *Demandant and* F. *Tenant, of one Messuage, with the appurtenances in* T. *and summon by good summons the aforesaid* F. *that then he be there, the aforesaid* A. *thereupon to answer, and have thou there the Summons and this writ.*

D And here it not said (and another will) because the Original Writ of Right Patent, doth remain with the Demandant, and not with the Sheriff, *&c.* as do other Original Writs

And if the Tenant will remove the plea out of the County by *Pone*, he ought to shew some cause in the Writ; and the Writ is such. *The K. to the Sheriff, &c. Put before the Justices at* Westminster *in the fifteenth of Holy Trinity next to come, the plea which is in thy County, &c. as above said. And say to the aforesaid* A. *that then there he be that plea against the aforesaid* T. *thereupon to prosecute, if he will, and have there this Writ. Witness, &c. Because the aforesaid* A. *took to wife* W. *the Kinswoman of the Sheriff, &c. wherefore the same Sheriff favors, &c. and let Execution be made, &c. as abovesaid.*

E And in a Writ of Right in a Court Baron, if a forein plea

Plea be pleaded, or the miſs'ioyn'd to be tried by the Grand Aſſiſe; now if the Bailiff will proceed, The Tenant may have a Prohibition directed unto them, which ſhall inhibite the Bailies to hold the plea. Or he may inhibite the Lord himſelf; that he ſhall not hold the plea, *&c.* And alſo ſuch Writ ſhall be directed unto the Sheriff, forbidding him to hold plea in the County Court, upon the Writ of Right after ſuch Pleas pleaded; and if they do proceed, he may ſue forth an *Alias*, and a *Pluries*, and an *Attachment* againſt them.

And it is to know, That if the Lord or Bailies do ceaſe B to proceed in the plea by reaſon of ſuch Writ of Prohibition; then when the Juſtices in Eyre come into the County for all Pleas, the Demandant may come into the Chancery by the Record of the Writ of Prohibition, which iſſued before out of the Chancery, which is always enrolled in the Chancery; and thereupon he ſhall have a Writ directed unto the Sheriff, to ſummon four Knights, to chuſe the Grand Aſſiſe upon the Writ of Right, which is in the Lords Court, or in the County, and the Writ of chuſing the Grand Aſſiſe, ſhall be ſuch.

The K. to the Sheriff, &c. Summon by good Summons four Legal Knights of thy County, that they be before the Juſtices, at the firſt Aſſiſes when they come into thoſe parts, to chuſe upon their Oath twelve of the Legal Knights of the Venew of N. *who beſt know and can ſpeak the truth, to make recogniſance of our Grand Aſſiſe, betwixt* A. *Demandant and* B. *Tenant, of one Meſſuage with the Appurtenances in* N. *whereof the ſame* B. *who is Tenant, hath put himſelf upon our Grand Aſſiſe, and requeſts recogniſance to be made, whether of them hath better right in the Meſſuage foreſaid, and ſummon by good Summons the foreſaid* B. *that then he be there to hear that election, and have there the names of the Knights, and this Writ.*

[5] And when the plea is in the Common Pleas, then this A Writ of *Magna Aſſiſa eligenda* ſhall iſſue out of the Common Pleas, and is Judicial; but in the caſe before, it ſhall iſſue out of the Chancery without paying a fine. And if the B Demandant ſue a Writ of *Precipe in Capite* in the Common Pleas for Lands holden of another Lord, then of the King, then the Lord of whom the Lands are holden, may ſue forth a Writ, directed unto the Juſtices of the Common Pleas, rehearſing how that the Land is holden of him, commanding them to proceed no further, *&c.*

And

C And as before is ſaid, None can ſue or maintain ſuch Writ of Right Patent, but they who have an eſtate in Fee-ſimple, as Tenant in Fee-ſimple, or Abbot, or Prior, or Biſhop, or Maſter of an Hoſpital, and a Body Politick, as Major and Comminalty, or Bailies and Comminalty, *&c.* and ſuch Bodies Politicks may have ſuch Writs for their poſſeſſions: But Parſons, Vicars, or Chantery Prieſts, or Prebendaries, who have Patrons and Ordinaries over them, cannot maintain this Writ of Right Patent, but another Writ which is called *Jure utrum*, the nature of which Writ ſhall be after expreſſed.

D If a man bring a Writ of Right Patent, as heir unto his Anceſtor, he ought to lay the Seiſin and Eſplees as in pernancy of the profits of the Lands in his Anceſtors. And if an Abbot or Biſhop, or ſuch Body Politick, bring ſuch Writ he ought to lay the Seiſin of the Eſplees, as in pernancy of the profits in themſelves, or in their predeceſſors. And for the reſidue of this matter, touching the Writ of Right Patent, and the Count, and the Bars, and all the Circumſtances thereof. See the title of *Droit* in the Abridgements.

E And note that a Writ of Right, which is called *Præcipe in Capite*, is no Writ of Right Patent, but is a Writ of Right Cloſe, and ſhall be directed unto the Sheriff of the County, and lieth where the Kings Tenant is ſeiſed in Fee-ſimple, of Lands holden of the King in chief, as of his Crown, and not of the King, as of any Honor, Caſtle, or Manor, but meerly of the King as of his Crown, who is a Lord in groſs, (becauſe it is holden of him who is always King) as deforced, *&c.* And this Writ is as high in its nature, as the Writ of Right Patent, and no perſon can ſue this Writ, if he hath not an eſtate in Fee-ſimple of his own poſſeſſion and ſeiſin, or of the ſeiſin of his Anceſtor or Predeceſſor. 31 H. 8. Dyer 46, 45.

G And it lieth alſo where Tenant in fee-ſimple of any Lands or Tenements, who holdeth ſuch Lands or Tenements of the King in chief, as of his Crown, and not of the King as of any Honor, Caſtle or Manor, loſeth his Lands or Tenements by default in a *Præcipe quod reddat*. Now he, or his heir may have this Writ of Right, of *Præcipe in Capite* againſt the Tenant of the Freehold of thoſe Lands or Tenements. And this Writ ſhall be cloſe, and ſhall be directed unto the Sheriff, and returnable in the Common Pleas before the Juſtices

Justices there, and in this Writ he ought to lay the seisin in himself, or in his Ancestor or Predecessor in the same form as he shall do in a Writ of Right.

The K. to the Sheriff of Nottingham, *&c. Command* A. *that* I *justly, &c. he renders to* B. *one Messuage, with the appurtenances in* D. *which he claims to be his right and inheritance, and to hold of us in chief; and whereof he complains, that the foresaid* A. *him unjustly deforced, &c. and unless he do it, and the foresaid* B. *secures thee his clamor to prosecute, then summon by good summons the foresaid* A. *that, &c.* Or thus, if an Abbot or other Spiritual persons sue the Writ, *Which he claims to be the right of his Church of St.* Mary *of* N. *and to hold of us in chief, and of which he complains, &c.*

v.21 Ed.3. *Br. Tenures*, 16. 33 H.8 52. There are some Honors, of which, Lands are holden *in Capite*.

And by this Writ it fully appears, That Lands which are K holden of the King, as of an Honor, Castle, or Manor, that they are not holden *in Capite* of the King, because that the Writ of Right, in such case shall be directed unto the Baily of the Honor, or Castle, or Manor, to do Right, *&c.* But when the Lands are holden of the King, as of his Crown, they are not holden of any Manor, Castle, or Honor, but meerly of the King as King, and of the Kings Crown as of a Seigniory by it self in gross, and in chief, above all other Seigniories. And thereof it followeth, That there are many Errors and erroneous opinions at this day, in the suing of Liveries, and finding of Offices, and of the determining what Lands shall be taken to be holden of the King in chief, and which not, and therfore *quare* to know the truth.

32 Ed.3.38 *Br. Droit de reito* 9.

In Præcipe in Capite, the Tenant shall not plead, That the L Tenements are not holden of the King, although the Writ doth so suppose, but he ought to take the same by protestation, and plead other matter in Bar, if he have any matter to plead.

And in a Writ of Right, he ought to Count of his own M Seisin, or of the Seisin of his Ancestor, and if he count of the Seisin of his Ancestor, he may alleage the Seisin in the time of K. *Richard* the First, but the Seisin is not traversable; but the Tenant may tender a demy mark to enquire of this Seisin, *&c.* And if it be found with the Tenant, that the Ancestor was not seised, the Demandant, shall be barred: But if the King be party Demandant, the Tenant cannot tender the demy mark to enquire of the Seisin, but ought to plead in Bar; and there the Tenant shall have no imparlance

parlance without the aſſent of the Kings Serjeants. And it ſeems reaſonable, if the Tenant in a *Præcipe quod reddat* loſe by Action tried, that yet he ſhall have a Writ of Right.

N And ſo if the Demandant be barred in an Aſſiſe of *Mortdauncestor* brought by him, or other real action as a Writ of Entry *ſur diſſeiſin, &c.* or ſuch Writ, and is barred by action tried, yet he ſhall have a Writ of Right Patent; of *Præcipe in Capite*, if the Lands be holden of the King in chief; and ſo it ſeemeth, If a man loſe by default in a Writ of Right before the miſe joyned, yet he ſhall have a Writ of Right againſt him who recovereth. But after the miſe joyned it is otherwiſe, for then upon default after iſſue joyned, the judgment ſhall be final as well againſt the Demandant by his Non-ſuit, as againſt the Tenant if he make default after. *C. 5 part. 86.* If the Tenant after the miſe joyned maketh default, final judgment upon that default ſhall not be given, but a *Petit. Cape* ſhall iſſue, for peradventure he may ſave his default, but judgment final where it ought not to be in a Writ of Right, ſhall binde until it be reverſed.

A And a man ſhall have a Writ of Right Patent of a Rent as well as of Land. [6]

Writ of Right in London.

B WRit of Right Patent in *London* lieth of Lands or Tenements within the City, *&c.* by him who claims an eſtate in Fee-ſimple in the Lands and Tenements, and not by him who claims an eſtate for life, or in tail, or in Dower, or by the courteſie. For if Tenant in Fee-ſimple loſeth his Lands in *London* by default, or by verdict, it ſeemeth that he ſhall have a Writ of Right of thoſe Lands directed unto the Major and Sheriffs, and it ſhall be in the nature as a Writ of Right Patent, and the form of the Writ is ſuch.

C *The K. to the Major and Sheriffs of* London, *Greeting. We command you, that without delay full right you do to* E. *of* N. *of one Meſſuage, and two ſhops with the appurtenances in* London, *which he claims to hold of us by free ſervice, &c. of which* W. *deforced him, that no more therefore a clamor we may hear for defect of right. Witneſs, &c. And ſhall not ſay in this Writ, and unleſs you do it, let the Sheriff of ſuch a County do it, &c.* Becauſe the Writ is as well unto the Sheriff of the ſaid City, as unto the Major.

And the Writ of Right Patent which ſhall be directed unto

to another City or Borough ſhall be of like form as the Writ aforeſaid is, as appeareth by the Regiſter, thus.

The K. &c. to the Major, and Bailies of Oxford, *Greeting. We command you, that without delay, full right, &c. to* E. *of* C. *of twenty ſhillings of rent, and paſture for ſixteen Oxen with the appurtenances in* N. *of which* A. *of* B. *him deforces, &c.*

And becauſe that the Lands and Tenements within Cities and Boroughs are holden of the King in Burgage tenure it behoveth, that the Writ of Right Patent ſhall be directed unto the ſaid Majors and Sheriffs or Bailies, as Bailies and Officers of the King; as if Lands were holden of the King, as of any Honor, or Caſtle, or Manor. D

And alſo upon a Writ of Right ſued in *London*, the Plea ſhall not be removed by *Tolt*, or *Pone*, or *Recordare* as another Writ of Right ſued in the Court of another Lord ſhall be, But if the Tenant in the Writ of Right in *London*, vouch a Foreiner to Warranty, the Demandant ſhall come into the Chancery, and ſhall ſue a *ſumm. ad warrantizandum* in the Common Pleas before the Juſtices at a certain day, and another Writ unto the Major and Sheriffs, to ſend the Record before the ſaid Juſtices at the ſame day, *&c.* and then the Major and Sheriffs do adjourn the parties before the Juſtices of the Common Pleas at a certain day; and alſo at the ſame day ſhall ſend the Record which is before them, before the ſaid Juſtices, & when the Juſtices have determined the Warranty, they ſhal ſend back the Record by Writ which ſhall iſſue out of the Rolls of the Juſtices directed unto the Major and Sheriffs, commanding them to proceed in the Plea, within the ſaid City. And the ſame is by the Statute of *Gloceſter de Forinſ. vocat' ad Warrantum, cap.* 12. And ſo ſhall it be done, if the Tenant plead a Forein Plea, the Plea ſhall be removed as aforeſaid, and when the matter of the Plea is determined, then ſhall it be ſent back unto the Major and Sheriffs as aforeſaid, by the equity of the ſaid Statute. E

And by the rule in the Regiſter every *Præcipe quod reddat* of Plea of Lands or Tenements in *London*, ſhall be directed unto the Major and Sheriffs joyntly; but every other Writ ſhall be directed unto the Sheriffs onely. F

And it is now a common opinion, That if a man hath title to have a *Formedon* of Lands or Tenements in *London*, or any other action real, as a Writ of *Entre ſur Diſſeiſin*, or other Writ whatſoever of Lands or Tenements, that he ought

to

to ſue this Writ of Right Patent, directed unto the Major and Sheriffs of *London*, That they ſhall do Right, *&c.* And that the Demandant upon this Writ, ſhall make his proteſtation to ſue it in the nature of what Writ that he will, as a man ſhall do upon a Writ of *Droit cloſe* ſued in ancient Demeſn: But it ſeemeth the Law ſhall not be ſo, for this Writ is a Writ of Right Patent, which is directed unto the Major and Sheriffs, as other Writs directed unto another City, or Borough, are. And I have not heard that a man ſhall make proteſtation to ſue ſuch Writ Patent in the nature of what Writ he will. But the City of *London* by their Cuſtom have power to hold Pleas of Lands within the City, by other the Kings Writs, as well as by Writ of Right Patent, and that appeareth by the Regiſter.

G And it appeareth, That *London* is not ancient Demeſn, for then the Writ of Right which ſhall be directed unto the Major and Sheriffs ſhould be cloſe, and not Patent. And it appeareth by the Regiſter, in the Title of *Juris utrum*, That a *Juris utrum* was ſued of Tenements in *London* retornable, before the Juſtices of the Common Pleas. 7 *H.* 6. 3. ac' 17 *H.* 6. 27. But *Plow.* 124. *Stanford*, contrary.

And alſo it appeareth in the Regiſter, in the Title of Writs of Waſte, in the end of the Title, That a Writ of *Partic' faciendâ* was directed unto the Major and Sheriffs of *London*, to make Partition of Tenements in *London*; and alſo there followeth a Writ of *Eſtrepment* ſued and directed unto the Sheriff of *London* upon a Writ of *Juris utrum* depending before the Juſtices of the Com' Pleas of Tenements in *London*.

A And it appeareth in the Regiſter a Writ of Juſtices of Dower, ſued in *London*, for Lands in *London*, was directed unto the Major and Sheriffs of the City, and a ſpecial Writ for the Heir in Tail, for Lands in *London*, directed unto the Major and Sheriffs there, upon a Deviſe made of the Lands unto his anceſtor in tail, *&c.* And the like Writ for him in the Remainder in tail, and alſo for him in the Reverſion. And the like Writs upon Deviſes made in other Cities and Boroughs, by ſome perſons to others, *&c.* And theſe Writs are in the Regiſter, after the Writ of *Formedon* in the Remainder, *Fol* 244. [7]

And by theſe Writs it appeareth, that a Writ of Right Patent which is directed unto the Major & Sheriffs of *London*, is not ſuch a Writ as a man ſhall declare thereupon, in the nature of what Writ he will, *&c.* as it ſhall be upon a Writ of *Droit*

Droit close sued in ancient demesn, but that it behoveth to sue in *London* his Writ in the nature of such Writ as his case requireth, *&c.* But *Quære veritatem* of that which was used in ancient times in *London*.

And it appeareth in the Register, That the King shall have a Writ of Escheat retornable into the Kings Bench, for Lands in *London* escheated unto the King, and by the same reason another man shall have a Writ of other nature, there retorned in the Common Pleas. But the King hath a Prerogative in this matter before others, to sue in what Court he will, but he cannot alter or change the nature of the Writ, otherwise then the Law giveth the same to him, and others, and therefore *Quære* of this matter.

There is also another Suit, which lieth in a City or Borough for Lands or Tenements, by Usage and Custom of the City, and that is by Bill without any Writ out of the Chancery, and the same is called a Bill of *Freshforce*, or an Assise of *Freshforce*, and lieth onely where a man is disseised of his Lands or Tenements in any City or Borough, or deforced of any Lands or Tenements after the death of his Ancestor, or after the death of his Tenant for life, or in Tail, or in Dower, or the like. Now within forty days after the title accrued unto him, he may sue this Bill of *Freshforce*, and shall make protestation to sue in the nature of what Writ he will, as Assise *de Mortdauncestor*; or in Assise of *Novel Disseisin*, or *Intrusion*, or of *Formedon*, or in the nature of any other Writ, as his Case doth require. But after the forty days past after the title accrued unto him, he ought to sue a Writ out of the Chancery, directed to the Major and Sheriffs of *London*, as the case lyeth.

And also it appeareth by the ancient Treatise of *Natura Brevium*, That if a foreiner sue an Assise, or other *Precipe quod reddat* of Lands in *London*, in the Common Pleas, *&c.* That the Majors and Sheriffs, *&c* may demand Conusance, *&c.* And therefore it seemeth, if they do not demand Conusance of the Plea, but suffer the Recovery to pass in the Common Pleas before the Justices, That then the Recovery is good in the Common Pleas for the Lands in *London*. And when the Majors and Bailies shall demand Conusance of Pleas, and when not, and when they have surceased their times, appeareth in the title Conusance, in the Abridgements more at large; and therefore see there.

Writ

Writ of Right of Dower.

E THe Writ of Right of Dower is Patent, and ſhall be directed unto the heir, to ſue in the Court of the heir, as it appeareth by *Britton*. And where the Writ is directed unto the heir of the husband, and the ſame heir is ſeiſed of the Land, whereof the wife demandeth Dower, then if he will not aſſign Dower unto the Feme, the Feme who is Demandant may remove the ſame by a *Tolt* into the County, and alſo may remove the ſame out of the County into the Common Pleas by a *Pone*, *&c.* without ſhewing any cauſe in the Writ, as the Demandant ſhall do in a Writ of Right Patent. But the Tenant in a Writ of Right Patent, ſhall not remove the Plea out of the County into the Common Pleas, without ſhewing of cauſe in the *Pone*. And the Tenant in a Writ of Right Patent, or in a Writ of Right of Dower may remove the plea into the Common Pleas, by a *Recordare* out of the Court of the Lord, upon cauſe ſhewed in the Writ; and what cauſes are ſufficient and good to remove the plea out of the Lords Court, or out of the County, and what not, do appear in the Regiſter; and therefore ſee the cauſes there: But the Demandant cannot remove the plea out of the Court of the heir by a *Pone*, becauſe he ought firſt for to remove it by a *Tolt* into the County, and from the County he may remove it into the Common Pleas by a *Pone*, without ſhewing of cauſe in the Writ as before is ſaid.

And in a Writ of Right Parent, the plea may be removed at the Tenants ſute by a *Recordare* out of the Lords Court, into the Common Pleas before the Juſtices there; and by the ſame reaſon it ſeemeth, that it may be removed at the ſuit of the Tenant, in a Writ of Right of Dower out of the Heirs Court into the Common Pleas, before the Juſtices there by a *Recordare* for good cauſe. But *quære*.

F And if the husband do enfeoff a ſtranger of all his Lands and dieth, and his heir hath nothing by deſcent. Now if the Feme be to ſue forth a Writ of Right of Dower, it ſeemeth that ſhe ſhall ſue her Writ of Right of Dower directed unto the ſame feoffee, *&c.* for after the endowment, the feoffee ſhall be her Lord, and ſhe ſhall hold this Dower of him by Fealty. But before the Statute *de quia Emptores terrarum*: [8]

If the Husband enfeoff a ſtranger of parcel of his Lands, *&c.* to hold of him, then if the Feme be to ſue a Writ of Right of Dower againſt the Feoffee, the Writ ſhall be ſued in the Heirs Court, and the Writ ſhall be directed unto the Heir, for the Seigniory that remaineth in him.

And ſo if the Husband at this day giveth parcel of his A
Manor in Tail to hold of him, and dyeth, the Feme ſhall ſue her Writ of Right of Dower, in the Court of the heir of her Husband againſt the Donee in Tail, and the Writ ſhall be directed unto their Heir: But if the Husband make a Gift in Tail of all the Land that he hath, and dieth, and the Feme is to ſue a Writ of Right of Dower of that Land, then the Husbands heir cannot have any Court, becauſe he hath but a Seigniory in groſs; and therefore it ſtands with reaſon, that ſhe ſhould have her Writ of Right of Dower, againſt the Donee in Tail, directed unto the Sheriff, returnable in the Common Pleas, and ſhe ſhall have this clauſe in the Writ, becauſe *B.* the chief Lord of the Fee hath remiſed to us his Court.

And ſo if the Husband make a Leaſe of all his Lands unto B
a ſtranger for life and dieth, and the Feme is to bring a Writ of Right of Dower, againſt the Leſſee for life, then it ſeemeth reaſonable, that the Feme have her Writ of Right of Dower, againſt the Leſſee for life in the Common Pleas, becauſe that he in the Reverſion hath not any Court. And although that this clauſe, *viz.* Becauſe the chief Lord, *&c.* be put in the Writ, if the Lord have not any Court to hold, becauſe it is a Seigniory in groſs, and not any Demeſn Land to hold a Court, *&c.* Then although the Lord did never remit his Court, and that there is not any matter apparent or remaining in the Chancery, to prove the aſſent and Lord's will to remit his Court, yet the Writ returned into the Common Pleas, before the Juſtices there, is good, and they ſhall proceed thereupon, if the Lord hath not any Court to hold plea for this matter. And it ſeemeth that the Lord ſhall not have his action againſt the Demandant for ſuing the Writ in the Common Pleas, if he hath no Court to hold plea thereupon, and to do right unto the party. But if the Lord hath a Court to hold plea, then he may have a Prohibition to the Juſtices of the Common Pleas, that they do not proceed upon the plea, otherwiſe not. *Quare* of this matter.

And

C And this Writ of Right of Dower lieth where a Feme is endowed of parcel of her dower, and she would demand the residue against the same Tenant, and in the same Town, then she ought to sue this Writ of Right of Dower, for the words of the other Writ will not serve, *viz. Unde nihil habet*, because that she hath received part of her Dower, and therefore of necessity it behoveth her to sue this Writ of Right of Dower, to recover the residue, and the Writ shall be directed unto the heir, or unto his Gardian, if he be in Ward, as a Writ of Right Patent shall be, *&c.*

A

D And if a Feme lose her Land which she holdeth in Dower by default in a *Præcipe quod reddat*; yet according to the opinion of some men, she shall have a Writ of Right of Dower. But it seemeth that by the Equity of the Statute of *West.* 2. *cap.* 4. That if a Feme lose by default the Land whereof she hath had Dower, that by that Statute she shall have a *Quod ei deforceat* to recover that Land, and before that Statute she had no remedy for to recover the Land, but onely an action of *Disceit*, if she were not summoned in this Writ of Right of Dower.

B

E And if a Feme hath Dower, and lose the same by Assise or action tried, it seemeth she hath not any remedy, but onely by Attaint, for it seemeth that she shall not have remedy to recover by a Writ of Right of Dower, because she had the Land once assigned unto her in Dower, and she was in possession of the same; so that the title was executed, and so she ought to sue an action of her own possession, if she
F be afterwards deforced. *Tamen quære.* And after the plea removed unto the Common Pleas, the Proces is then *Grand Cape*, and *Petit Cape*. And in the heirs Court the manner is to make a precept in the nature of Summons, and of *Grand Cape* and *Petit Cape*, and the Writ directed unto the heir is such.

G *The K. &c. to* A. *Greeting. We command thee that without delay full right thou dost to* B. *which was the wife of* C. *of the third part of ten acres of Land, with the appurtenances in* W. *which she claims to hold of thee in Dower by free service of the third part of a penny by the year, for all service, of which* C. *deforces her, &c.*

H And also a Feme may have a Writ of Right of Dower of the moytie according to the usage of Gavelkind, where she
I hath received part, and is deforced of part. And also it

appeareth by the Regiſter, that the ſeme ſhall have a Writ of Right of Dower directed unto the heir himſelf, where he himſelf deforceth her of the profits of an office, and the Writ is ſuch,

The King, &c. to A. Greeting. We command thee that full right thou doſt to A. and R. his wife, of the third part of the iſſues coming from the cuſtody of the Gaol of the Abbey of Weſtminſter, *and of the third part of three Roods of Land, one Rood of Meadow, and of the Rent of ſo many Loafs, and of ſo many Flagons of Ale, or of ſo many Meſſes by the day, or week, or year, with the appurtenances in the City of* Weſtminſter, *which he claims to belong to his Franktenement which he holds of thee in the Dower of her R. in the ſame City, and to hold of thee by the ſervice of finding thee the third part of the Cuſtody; for the Cuſtody of the Gaol aforeſaid, and of the Gate of the ſame Abbey, for all ſervice, of which thy ſelf deforceſt them, &c.*

And by this Writ it appeareth, that a Feme ſhall have a Writ of Right of Dower of that thing which is appendant or appurtenant unto the Land which ſhe holdeth in Dower, *&c.* if ſhe be deforced thereof.

Writ of Right de Rationabili parte.

A Writ of Right *de Rationabili parte*, always lieth betwixt privies in blood, as betwixt Brothers in Gavelkind, or betwixt ſiſters and other Coparceners, as Nephews, and Neeces, and lieth for Lands in Fee-ſimple; as if the Anceſtor leaſe his Lands for the term of life and dieth, and hath iſſue two daughters, and afterwards the Tenant for life dieth, and one daughter entreth into the whole Land, and deforceth her ſiſter of the Land; her ſiſter ſhall have this Writ of Right *de Rationabili parte*; and ſo if the Anceſtor were diſſeiſed of Lands, and dieth, and one ſiſter entreth into the Lands, and deforceth her ſiſter thereof, the ſiſter who is deforced, ſhall have this Writ againſt her other ſiſter. And ſo two or three, may ſue this Writ againſt the fourth ſiſter, or the Aunt, and the Neece may ſue this Writ againſt that ſiſter which deforceth her of her part, *&c.* And this Writ lieth as well upon a dying ſeiſed of the Anceſtor, if one ſiſter enter upon all, and deforce the other ſiſters, as where the Anceſtor doth not die ſeiſed, and the Writ is a Writ of Right Parent, and ſhall be directed unto the Lord, of whom the

the Lands are holden as other Writs of Right Patent ſhall be, and ſhall be removed by *Tolt* and other Writs, as the Common Writ of Right ſhall be. But Grand Aſſiſe, nor Battail ſhall not be joyned in this Writ, for the privity of the blood that is betwixt them: Neither ſhall this Writ be ſued againſt a ſtranger, and if it be, it ſhall abate. And if the Anceſtor die ſeiſed, and one ſiſter entreth into all the Land, and deforceth her ſiſters, the others may ſue this Writ of Right *de Rationabili parte*, or a Writ of *Nuper obiit*, at their election. And ſo is it for Lands in Gavelkind, if one brother entreth into all the Lands, and deforceth his brethren, they may ſue this Writ of Right *de Rationabili parte*, or the *Nuper obiit*, if the Anceſtor die ſeiſed; but if the Anceſtor doth not die ſeiſed, then they ought to ſue this Writ *de Rello de Rationabili parte* But againſt a ſtranger, it behoveth to ſue *Aſſiſe de Mortdaunceſter*, upon the death of their Anceſtor, or other Writ (as their caſe ſhall require) of the ſeiſin of their Anceſtor. And the form of the Writ of Right *de Rationabili parte*, is ſuch.

H *The K. &c. to* A. B. *Greeting. We command thee that without delay, full right thou doſt to* W. F. *of ten acres of Land with the appurtenances in* F. *which ſhe claimeth to be her reaſonable part, falling to her of the Frank tenement, which was* I. *her Fathers, her Mothers, Uncles, Aunts, or Cozens in the ſame Town, and to hold of thee by the third part, or fourth part of one penny by the year for all ſervices, of which* B. *and* S. *deforce her.*

And by the Regiſter, in this Writ a man may ſee what Rent and ſervices all the Land which is partable betwixt the ſiſters, ſhall yeeld and pay unto the chief Lord, and accordingly put every one of the heirs to her part. So if there be one Demandant, and two deforceants, then thus. *which ſhe claims to hold of thee by the free ſervice of the third part of ſo much by the year.* And if there be two Demandants and two Deforceants, then thus; *Which they claim to hold of thee by free ſervice of a moyety, or two parts of ſo much by the year, for all ſervice.* And if all the Land be holden by four pence *per an.* and Fealty, and there are two Demandants, and two Deforceants, then the Writ may be. *which they claim to hold of thee by free ſervice of two pence by the year for all ſervice.*

I And if there be two ſiſters, and after the death of the Anceſtor they enter, & occupy in common as Coparceners. & one of them deforce the other ſiſter to occupy that which

is appendant or appurtenant to the Tenement which they have in Coparcenery: Then ſhe who is deforced, ſhall have a Writ of Right *de rationabili parte*, againſt her ſiſter, of that which is ſo appendant or appurtenant, and the Writ for that ſhall be ſuch. *Which ſhe claims to belong to the Frank-tenement, which ſhe holds of thee in the ſame Town, and ought to hold of thee by free ſervice of ſo much for all ſervice which* W. &c. And in this Writ he ſhall make his demand of a certain portion of Land, as to ſo much as his plea doth amount unto, to hold in ſeveralty, as if the Anceſtor die ſeiſed of twenty acres, and hath two daughters, and one entreth into the whole and deforceth her ſiſter; the other ſiſter ſhall demand by her Writ ten acres of the twenty acres, becauſe that ſuch is her part; and by this Writ, if ſhe recover, ſhe ſhall have Judgment to recover ten acres, to hold in ſeveralty, as her part doth amount unto.

And this Writ of Right *de rationabili parte*, ought to be brought againſt all the Coparceners that hold the Land, *&c.* and by all thoſe that are deforced of the Lands, as it appeareth by *Britton*; and Voucher and View do not lie in this Writ, becauſe of the privity of blood, but in a *rationabili parte*, the View was granted *Hil.* 15 *H.* 5. becauſe that the Anceſtor did not die ſeiſed, *&c.* And non tenure is no plea in this Writ by *Britton*, *&c.* and the Proces in this Writ, after it is removed into the Common Pleas, is *Sum. Grande Cape*, *& Petit Cape*; and in the Lord Courts the manner is to make Proces in nature of *Grand Cape*, *& Petit Cape*, *&c.*

[10] And the Heir of one Coparcener may ſue this Writ of Right *de rationabili parte* of the ſeiſin of the common Anceſtor, which was of the ſeiſin of his Anceſtor, in the time of K. *Richard* the Firſt, or *Henry* the Third, or of the ſeiſin in the time of K. *John*, or other Kings, after that time, if he can prove it. As a man ſhall have a Writ of Right Patent, of the ſeiſin of his Anceſtor in ſuch times, *&c.* But if one Coparcener claim the Land by a Feoffment made unto her by her Anceſtor in Fee; now if the other Coparcener deforce her of the Lands, ſhe may have a Writ of Right Patent againſt her ſiſter for the Land, and ſhall joyn the miſe by Grand Aſſiſe, or by Battail, becauſe ſhe doth not there claim the Land as heir to her Anceſtor as it ſeemeth. *Tamen Quære.*

Com. 306. No Battail lyeth betwixt them.

And if a man hath iſſue two daughters, and dieth ſeiſed of Lands in Tail, and one daughter entreth into the whole,

and

and deforceth her ſiſter; there the ſiſter may have a *Formedon* againſt the other ſiſter, and not a *Nuper obiit*, nor this Writ of Right *de rationabili parte*, for this Writ lieth properly for the Lands in Fee-ſimple.

Writ of Ne injuſte vexes.

C VVRit of *Ne injuſte vexes* lieth in caſe, where Lord and Tenant are, and the Tenant hath holden of the Lord and his Anceſtors, by Fealty, and twenty ſhillings Rent yearly, and of late time the Lord hath gotten ſeiſin of greater, and more Rent of the Tenant by payment of the Tenant of his own agreement without cohercion of diſtreſs. Now if the Lord will diſtrain the Tenant for this ſurpluſage of Rent, the Tenant cannot avoid the Lord in an Avowry for the ſeiſin which the Lord hath had by the payment of the Tenant of this Rent of his own agreement. But the D Tenant may ſue this Writ of *Ne injuſte vexes* directed unto the Lord, which Writ is in it ſelf a prohibition unto the Lord, that he do not diſtrain his Tenant to do other ſervices then of right he ought to do: And this Writ in its nature is a Writ of Right, and ſhall be Patent, and this clauſe *Et* E *niſi feceris, vicecomes, &c.* ſhall be put into the Writ. And the Proces in this Writ is, *Prohibition, Attachment*, and *Diſtreſs*, againſt the Lord, commanding him that he ſhal not diſtrain, *&c.* And this Writ is founded upon the Statute of *Magna Charta*, c. 10. which willeth, *That no man ſhall be diſtreined to do more ſervice of a Knights Fee, or other Frank-tenement, then is therefore due.* And the form of the Writ is ſuch.

Co. 4 part 11. Bevils caſe.

F *The K. &c.* to A. *Greeting. We command thee that thou vex not, nor permitteſt to be vexed* B. *for his Frank-tenement which he holds of thee in* I. *nor in any manner therefore from him to exact, nor to be exacted thou permit cuſtoms, and ſervices which therefore to do he ought not, nor was wont, and unleſs thou do, the Sheriff of* Lincoln *ſhall cauſe the ſame to be done, that no more therefore we may hear a clamor for defect of Right.*

G And this Writ is always anceſtrel, *viz.* where the Tenant and his Anceſtors have holden of the Lord and his Anceſtors by Fealty, and 20 ſhillings Rent, or other Rent and ſervice. And of later time the Lord hath encroached divers other ſervices or rents, by payment of the Tenant, or doing of other ſervices which he ought not to do unto the Lord, then

the Tenant may ſue this Writ, for by incroachment of Rent by the Lord by payment of the Tenant, the Tenant ſhall not avoid the ſame in an Avowry by the Lord for that Rent which is ſo incroached. But if the Lord do incroach other Services which the Tenant of Right ought not to do unto him, as Homage, or Eſcuage, then the Tenant may avoid this incroachment in Avowry by the Lord for theſe ſervices, becauſe the Tenant may traverſe the manner of the tenure in that caſe, as to ſay, That he holdeth of the Lord by fealty and twenty ſhillings Rent onely, without that that he holdeth by Homage, Fealty, and Rent in manner and form as the Avowry is made; or the Tenant may ſue this Writ of *Ne injuſte vexes* in that caſe, if he will: And if the Lord do diſtrein to do other ſervices after the prohibition delivered unto him, or to pay more Rent then of right he ought to pay, then the Tenant ſhall have an Attachment againſt the Lord, returnable in the Common Pleas, or in the Kings Bench. And when the Lord cometh upon the Attachment, then the Tenant ſhal count againſt him in this maner.

But otherwiſe in Aſſiſe of Rent, or in a Writ of *Reſcous* or *Ceſſavit*, for the tenure is traverſable in theſe Writs, 32 *Ed.* 4. 7. 22 *Aſſ.* 68. *Thorpe.* 10 *H.* 7. 11. 26 *H.* 8, 6. *Com.* 45. & 94.

B. ſheweth unto you, That whereas he holdeth of the aforeſaid *A*, *&c.* as of his Manor of *C.* twenty acres of Land with the appurtenances in *W.* by Homage, Fealty, and by the ſervice of the twentieth part of a Knights fee, and by the ſervices to render to the ſaid *A.* half a pound of Pepper yearly at the Feaſt of *All-Saints* for all manner of ſervices; yet the aforeſaid *A.* over the ſervices aforeſaid, vexeth the ſaid *B.* and ſuffereth him to be vexed, and of him demandeth, and diſtraineth, and ſuffereth him to be diſtreined for nine ſhillings *per annum* of Rent, for which he is damnified unto his damage of twenty pound. And ſo note, That he ſhall declare of damages in this Writ; and then upon this Count, the Lord who is defendant ſhall make his defence, and ſhall defend the wrong, and force, *&c.* and ſhall count againſt the plaintiff, and ſhall ſay, that he doth notoriouſly demand the ſaid Rent of nine ſhillings, over the other ſervices, *&c.* for he ſhall ſay, that the ſaid *B.* holdeth the ſaid twenty acres of Land, *&c.* of him, by the ſaid Rent and ſervices, *&c.* And that he the ſaid *A.* was ſeiſed as well of the ſaid rents of nine ſhillings, as of all the other ſervices aforeſaid by the hands of the aforeſaid *B.* as by the hands of his very Tenant for the ſaid twenty acres of Land, with the appurtenances as of Fee and of Right in time of peace, *viz.* in the time of

K *Edward*, late K. of *England*, *&c.* in taking of the Eſplees, *viz.* Rents, *&c.* And that ſuch is his right he is ready to make good by his body, *&c.* [11]

A And thereupon, he who is Plaintiff in the *Ne injuſte vexes*, ſhall defend this Count, and thereof ſhall put himſelf upon the Grand Aſſiſe, and ſo the miſe ſhall be joyned betwixt them in this Writ, which is at the firſt but a Prohibition, *&c.* And Judgment final ſhall be given upon this Writ after the miſe joyned, if it paſs againſt any of the parties, or if any of them be nonſuit, or make default after the miſe

B joyned. And ſee the form of the Count, and of the defence in this Writ, in the Book of Entries of Pleas, *fol.* 90. on the firſt page.

C And it appeareth *M.* 18 *Ed.* 2. that the Feoffee ſhall not avoid ſeiſin of rent had by incroachment of his Feoffor, nor ſhall he have a Writ of *Ne injuſte vexes*; nor a man ſhall not have a Writ of *Ne injuſte vexes* againſt the Grantee of the Seigniory, as appeareth *Paſche*, 10 *Ed.* 3. 14 *H.* 4. 5. *ac.* by *Thirning*, and after 163.

D And *Trin.* 20 *Ed.* 3. it appeareth, that Tenant in Tail ſhall not have *Ne injuſte vexes*, *&c.* but he ſhall plead, and ſhew the matter, and ſhall not be eſtopped by the payment and ſeiſin had by the hands of his Anceſtors; but by a ſeiſin had by his own hands, he ſhall be bounden, during his time in avowry, as it ſeems. But after the miſe joyned in a Writ of *Ne injuſte vexes* ſued, if the parties imparle until another term, & day, and after at this term, at the day the Lord who is the defen-

E dant in the *Ne injuſte vexes* make default. Now what proces ſhall be awarded thereupon, or if Judgment ſhall be given upon this default, without any proces, *Quære.* And ſo if the plaintiff at another term, after the miſe joyned, and day given, *&c.* make default, it ſeemeth he ſhall be *Nonſuit*, *&c.*

Writ de Recto Clauſo.

F WRit of *Droit cloſe*, is a Writ which is directed unto the Lord of Ancient Demeſn, and lieth for thoſe Tenants within Ancient Demeſn, who held their Lands and Tenements, by Charter in Fee-ſimple, or in Fee-tail, or for life, or in Dower, if any of them be ouſted of his Lands or Tenements, or diſſeiſed, *&c.* he or his heir may ſue this Writ of *Droit cloſe*, directed unto the Lord of Ancient Demeſn, commanding him to do right, *&c.* in his Court; and the form of the Writ is ſuch.

Henry,

Henry, *by the Grace of God, &c. to his Bailies of* S. *Greeting.* G
We command you that without delay, and according to the cuſtom of our manor of I. *full right you do to* A. *of one Meſſuage with the appurtenances in* I. *of which* B. *deforces him, that no more therefore a clamor we may hear for defect of right. Witneſs, &c.*
And another Writ thus.

The K, &c. to the Bailies of his Caſtle of Banburg, *Greeting.* H
We command you, that, &c. according to the cuſtom of the Manor of the Caſtle of Banburg, *full right you do of two parts of the fiſhing of the water of* I. *in* Banburg, *of which* B. *deforces him, &c.* And the order of putting the parcels of houſes, Lands, Meadows, and Paſture, *&c.* ſhall be obſerved and uſed as ſhall be done in a Writ of Right Patent. And this Writ may I be ſued of Common of Paſture; and for ſtopping of a way, and ſuch like, and the Writ for the Common is ſuch.

The K, &c. We command you, that full right you do, &c. of a K *Common of Paſture in* T. *which belongs to one Meſſuage, and twenty acres of Land, which according to the cuſtom of the Manor aforeſaid, he holds in the ſame Town, of which* B. C. *and* D. *deforced him.* And for ſtopping of a way the Writ is ſuch.

The K, &c. to the Bailies of the Biſhop of Coventry *and* L Liechfield, *of the Manor of* C. *Greeting. Plained unto us hath* R. *that* W. *injuſtly and without Judgment hath ſtopped up a certain way in* D. *which is within the precinct of the ſame Manor to the Nuſance of one Meſſuage, which the ſame* R. *according to the cuſtom of the Manor aforeſaid holds in the ſame Town. And therefore we command you, that calling before you the parties aforeſaid, and hearing ſeverally the reaſons, to the ſame* R. *due, and ſudden compliſhment of Juſtice you cauſe to be made, as according to the cuſtom of the Manor aforeſaid, is to be done, &c.*

And note, That the Demeſn Lands of a Manor, and the M Manor it ſelf, which is called Ancient Demeſn, is pleadable at the Common Law, and a man ought to ſue his actions for the Manor, and for the Lands which are parcel of the Manor at the Common Law, and in the Common Pleas. But if a man will ſue for the Lands which are holden of the Manor, which are in the hands of a Free-tenant who holdeth of the Manor, for theſe Lands he ought to ſue this Writ of *Droit cloſe*, directed unto the Lord of the Manor, and there he ſhall make his proteſtation to ſue in that Court, the ſame Writ in the nature of what Writ he will declare, and the

form

form of Entry when ſuch a Writ is brought in Court, is ſuch.

N *To this Court came* R. N. *by* Nicholas B. *his Attorney, by the Letters Patents of him* R. *and delivered to the ſaid Bailies a certain Writ of our Lord the King now cloſe, to the ſame Bailies directed, in form of Law according to the cuſtom of the Manor aforeſaid, to be executed; the Tenor of which follows in theſe words.*

Henry, *&c. To the Bailies of* I. S. *Greeting. We command you, that juſtly and without delay, and according to the cuſtom of the Manor of* G. *of* S. *full right you do to* R. N. *of two Meſſuages, &c. in* W. *and* H. *of which* P. *and* C. *deforce him, that no more a clamor therefore we may hear for defect of right, &c.* [12] *And upon this the foreſaid* Robert N. *found pledge of proſecution in the Writ aforeſaid, viz.* T. *and* W. *and proteſts to proſecute that Writ in the ſame Court, in form and nature of the Writ of Aſſiſe of Novel Diſſeiſin, at the Common Law according to the cuſtom of the Manor aforeſaid, ſaying, That* P. *and* C. *injuſtly and without Judgment diſſeiſed him of his Frank-tenement in* W. *and* H. *viz. Of the Tenement aforeſaid, with the appurtenances after the firſt, &c. and he requires therefore Proces to be made, according to the cuſtom of the Manor aforeſaid, &c. and therefore according to the cuſtom of the Manor aforeſaid, it is commanded to* T. H *Sub-baily of this Manor, and Miniſter of this Court, That he cauſe thoſe Tenements to be reſeiſed with the Chattels in them taken, and the ſame Tenements with the appurtenances to be in peace, until the next Court, before the Bailies and Suitors of the ſame Court. viz. Thurſday next to come here, to it at* S. *to be held; and in the mean time, let him cauſe twelve free and legal men of the Venew of* W. *and* H. *within the precinct of the Manor aforeſaid, to view the Tenements aforeſaid, and their names to be writ down; and that he ſummon them by good ſummons, that then they be here, viz. at* S. *ready thereupon to make Recogniſance, and that he put by Sureties and ſafe Pledges, the aforeſaid* P. T. *or his Baily, if he ſhall not be found, that then he be here at* S. *to hear that Recogniſance, &c. And that then he have there the names of Pledges, Summons, and the ſaid Precept to him therefore directed, and the ſame day is given to the foreſaid* R. N, *&c. here, &c.*

See all this form to make proteſtation in the Book of Entries of Pleas, *f.* 125. And then at the day of the Precept and Proces returned, the Defendant ought to appear and plead in Bar, or unto the Writ, or other matter, in ſuch form as ſhall

ſhall be in an Aſſiſe at the Common Law. And if the proteſtation be made in the nature of another Writ, then the precept ſhall be according unto the nature of the proces which is given in ſuch Writ; and the Tenant when he cometh in, ſhall plead as he ſhal do in ſuch Writ ſued againſt him at the Common Law, for the nature of the proteſtation doth alter and change the manner of pleading for the Tenant.

A And if falſe Judgment be given in this Writ, the party Tenant, or Demandant may ſue a Writ of falſe Judgment thereupon.

B But he who holdeth Land in Ancient Demeſn by Copy of Court Roll, at the will of the Lord, who is called Tenant by baſe Tenure, if he be ouſted of his Lands or Tenements there in Ancient Demeſn, he ſhall not have this Writ of *Droit cloſe*, but he ought to ſue by Bill in the Court of the Lord of the Manor, and ſhall make proteſtation to ſue there in the nature of what Writ he will. But if falſe Judgment be given againſt him in that Court, he ſhall not have a Writ of falſe Judgment thereupon at the Common Law, nor other remedy, but to ſue unto the Lord by way of Petition, as it appeareth in *Hil.* 14 *H.* 4. for thoſe who hold their Lands in baſe Tenure in Ancient Demeſn, or by the Rod, hold them in vilenage, and they ſhall not have ſuch Writ of *Droit cloſe*, nor a Writ of falſe Judgment, *&c.* See 1 *Rich.* 2. 6. of that matter.

Lit. 16. *ac* 14 *H.* 4. 34. 7 *Ed.* 4. 19.

C And this Term, which is now at this day is called Copy-tenants or Copiholders, or Tenants by Copy, is but a new found Term, for of ancient times, they were called Tenants in Villenage, or of baſe Tenure, and that appeareth by the ancient Tenures, that thoſe who held by the Rod or in baſe Tenure, or by Copy of Court Roll, were then called and named Tenants which held in Villenage: For Tenants by Copy of Court Roll, are not ſpecified, nor named by ſuch name: But yet at that time there were ſuch Tenants, but then they were called Tenants in Villenage or of baſe Tenure.

D And when the Writ of *Droit cloſe* cometh unto the Lord, or unto his Bailies, the Lord ought for to hold his Court, and to proceed thereupon according to Law, *&c.* And if the Lord will not hold his Court, then the Demandant may ſue a Writ out of the *Chancery* directed unto the Lord, commanding

ding him to hold his Court, *&c.* And if he will not hold it, then the Demandant may ſue an Attachment againſt the Lord directed unto the Sheriff, returnable in the Common Pleas, or Kings Bench; and thereupon the Demandant ſhall recover his damages. And if the Writ of *Droit cloſe* be directed unto the Bailies, *&c.* and they will not hold the Court, then he may ſue ſuch a Writ unto the Bailies commanding them to hold their Court; and if they will not ſo do, he may ſue an Attachment againſt them directed unto the Sheriff, returnable as aforeſaid, *&c.*

B And if the Lord himſelf ouſte his Tenant of Lands which are holden of the Manor by Charter in Fee, the Tenant who is ouſted ſhall have this Writ of *Droit cloſe* directed unto the Lord himſelf, if he will, *&c.* Or in this caſe, he may have an Aſſiſe, or other Writ at the Common Law againſt the Lord for thoſe Lands. But it appeareth by a Rule in the Regiſter, That if the Demandant be defeated of Juſtice in the Lords Court, that then the Demandant may ſue a Writ directed unto the Sheriff, commanding the Sheriff, that he go unto the Court in Ancient Demeſn, and that he take with him four diſcreet Knights, in their proper perſons, to ſee that right be done unto the party Demandant in this Writ, and if the Sheriff refuſe ſo to do, he may have *Alias* and *Pluries*, and Attachment againſt the Sheriff in the Common Pleas or Kings Bench. But it ſeemeth, that this Writ which ſhall be ſo ſued directed unto the Sheriff, that he ſee right done to the Demandant, is of little effect, for by virtue of this Writ he cannot compel the Lord to do right unto the Demandant, as it ſeemeth. *Tamen Quare.* For if he cannot cauſe the Lord to do right unto the Demandant in a Writ of *Droit cloſe*, then it ſhall be in vain to ſue ſuch Writ, directed to the Sheriff, to go unto the Lords Court, and to ſee that right be there done. And the Demandant may ſue ſuch Writ directed unto the Bailies, or unto the Lord himſelf, commanding them that they do him right, *&c.* and that they do not delay the matter, *&c.* And thereupon an *Alias*, a *Pluries*, and *Attachment*, if need be. And if a Plea be removed in the County, the Demandant may ſue ſuch Writ directed unto the Sheriff, that he proceed in the plea, and to Judgment, and to do Right, and upon that, he ſhall have an *Alias*, a *Pluries*, and *Attachment* againſt the Sheriff, if he will not do accordingly.

[13]

And

And note, That the Demandant in a Writ of *Droit close* cannot remove the plea out of the Lords Court for no cauſe, *&c.* Nor the Tenant cannot remove the plea out of Ancient Demeſn, if not for cauſes which prove the Land to be Frank-fee, and not Antient Demeſn, and the form of the Writ of *Recordare* to remove the plea out of Ancient Demeſn is ſuch. B

34 H.6.35. 6 H.4.1. 50 Ed.3.34 2 H.7.30.

The K. &c. to the Sheriff of Lincoln, *Greeting. We command thee that taking with thee four diſcreet and legal Knights of thy County, in thy proper perſon thou go to the Court of* B. *of* C. *and in that full Court, cauſe to be recorded the plea, which is in the ſame Court, by our Petty Writ of Right, betwixt &c. of one Meſſuage, with the appurtenances in* I. *and that that Record thou have before our Juſtices, &c. and to the parties, &c. and have there the name of the foreſaid four men, and this Writ, and another Writ, &c. becauſe the foreſaid* A. *in pleading in the Court aforeſaid, brought forth a certain Charter of the* L. Henry, *ſometimes King of* England, *our Progenitor and great Grandfather, by which our ſaid great Grandfather infeoffed* W. *the Father of the foreſaid* A. *(whoſe heir he is) of the Meſſuage aforeſaid, as is ſaid, For which the ſaid* A. *ſays he ought, nay cannot anſwer without us. Let Execution be of this Writ, if the cauſe be true and the foreſaid* A. *requeſts it, otherwiſe not.* There is another clauſe in the Regiſter thus, *Becauſe he claims to hold the Tenement aforeſaid, at the Common Law, &c.* But then in the Common Pleas when the Record is removed, he ought there to ſhew ſome ſpecial matter to prove the Lands and Tenements to be Frank-fee, and not Antient Demeſn, otherwiſe the plea ſhall be ſent back unto the Lords Court; but to ſhew a fine levied in the Kings Court of the ſame Land, or a Recovery had in the Kings Court in a *Precipe quod reddat, &c.* is a good cauſe to prove the Lands to be Frank-fee; and if he claim the Lands by the Feoffment, and the Kings Charter, or by Feoffment of Charter of the Lord of the Manor, or if he claim to hold them of the King, as of another Manor, or Honor, *&c.* and not to hold them of the ſame Manor; or if he ſay, that in an Aſſiſe brought C

A Writ of Right Cloſe is brought and pendant the Writ, the Tenant accepts a fine *Sur conuſans de droit come ceo que il ad, &c.* yet the Land remains Ancient Demeſn, as to that action, becauſe he hath affirmed his Plaint before the Fine, and ſo was it holden 22 *Hen.* 7. *Rot.* 103. 40 *Ed.* 3. 4. 50 *Ed.* 3. 21. 34 *H.*6.35. 6 *H.*4.1. 11 *Ed* 3. *Cauſe de Remover Plts* 16. If the cauſe aſſigned, may be tried in Ancient Demeſn, it ſhall not be removed.

before

before of the ſame Lands or Tenements, at the Common Law againſt another Tenant, that the Tenant ſaid that they were Ancient Demeſn, and that they were Frank-fee, *&c.* VVhereupon it was found by the Aſſiſe, that they were Frank-fee, *&c.* And another cauſe appeareth in the Regiſter, becauſe that there are not any Suitors in the Lords Court of Ancient Demeſn to do Right, *&c.* But *Quære*, if this be a ſufficient cauſe or not. *Regiſter* 11. *Br. Remov. de Plea* 35. *Vid. en* a 17 *E.* 3.

Cauſe de remov. 1. Becauſe there were but ſix Suitors, and one Plaintiff, and the other Defendant, therefore removed; ſo four not ſufficient.

D If a Frank-Tenant of Ancient Demeſn who holdeth his Tenements by Knights ſervice, and in Fee, be ouſted and diſſeiſed of his Lands or Tenements, he ſhall ſue at the Common Law, and not in Ancient Demeſn, for no Lands are Ancient Demeſn, but Lands holden in Soccage. 26 *H.*8. 4. For Lands in Gavelkinde. See 14. *b.*

E And a man ſhall have a Bill of *Freſhforce* within forty days in the Lords Court of Ancient Demeſn for the Lands after the Diſſeiſin, and without ſuing any Writ thereupon: As a man ſhall have of Lands in a City or Borough, and there in that caſe, if the Tenant hath any matter to prove the Lands to be Frank-fee, he ſhall have a *Recordare* to remove the plea out of Ancient Demeſn into the Common Pleas, *&c.* 26 *H.*8. 4.

F And although the plea in Ancient Demeſn be there without VVrit, *&c.* If the Tenant remove the plea out of Ancient Demeſn by a *Recordare*, and for cauſe ſhewed in the VVrit, if the cauſe be not good, the Tenant in the Common Pleas ſhall not ſhew any new cauſe to retain the plea in the Common Pleas; but if the cauſe in the VVrit be, *which he claims to hold at the Common Law*, then in the Common Pleas he may ſhew what cauſe he will to retain the plea there; which cauſe ſhall prove the Tenements to be Frank-fee. 3 *H.*6. 34. 34 *H.*6. 35. or 44 *Ed.* 3. 10. 21 *Ed.* 3. 22. *Br. Ancient Demeſn* 18. or 34 *H.*6. 35.

G And in Ancient Demeſn, if the Demandant and Tenant put themſelves upon the Grand Aſſiſe, or the Tenant vouch a Tortiner, or plead a forein plea which cannot be tryed in the Lordſhip there, then a *Superſedeas* ſhall be granted out of the Chancery, directed unto the Lord of Ancient Demeſn, or his Bailies, if the VVrit were directable to the Bailies, that they ſhall ſurceaſe, *&c.* And the party Defendant ſhall ſue his VVrit of *Warranty of Charter* againſt the Vouchee, *&c.* 50 *Ed.* 3. 24. The Lord made a Leaſe for life, that is a good cauſe. 1 *H.*7. 30. *per Townſend.*

And

12 H.7. *Rot.* 103. It is holden that if they proceed after the Record removed and award execution, that it is not void. 16 *Ed.* 3. 3. *Proces* 167. the party had *Audita querela* against the Judges upon that case, and 17 *Ed.* 3. *ibid*, 186. It was holden, that the Sheriff shall be punished for his contempt.

And if the Sheriff do remove the Record in Ancient Demesn by *Recordare* into the Common Pleas, and afterwards the Bailies in the Court of Ancient Demesn proceed in the plea (nothwithstanding the removing of the Record) Then the Tenant may sue a *Certiorari* directed unto the Justices of the Common Pleas to certifie the Tenor [14] of the Record into the Chancery; and of this removement and upon the Certificate into the Chancery, the Tenant shall have an *Attachment* against the Bailies, who proceeded in the plea directed unto the Sheriff, for to arrest them returnable in the Common Pleas, to answer unto the King, and also unto the Tenant who sued forth the *Recordare*: But in Ancient Demesn, if the Tenant vouch a foreiner to Warranty, then the Tenant ought to sue his Writ of *Warrantia Chartæ* returnable in the Common Pleas against the Vouchee, and upon this Writ sued, to purchase a *Supersedeas* directed unto the Bailies of Ancient Demesn commanding them to surcease, until the plea in the *Warrantia Chartæ* be determined in the Common Pleas. And if the Bailies proceed after such Writ sued forth and directed unto them, the Tenant who sued the Writ, may have an *Attachment* of them directed unto the Sheriffs, *&c.* That he do attache them to answer in the Common Pleas at a certain day, *&c.* as well unto the King, as unto the party for the contempt, *&c.* But if the plea of *Warrantia Chartæ* be discontinued in the Common Pleas, then the Demandant in the Writ of *Droit close*, may sue a Writ out of the Chancery, directed unto the Justices of the Common Pleas, to certifie the King in the Chancery, if the plea of *Warrantia Chartæ* be pendant, or discontinued, or not; so that if it be discontinued, *&c.* or determined, that he may send unto the Bailies of Ancient Demesn, that they proceed in the plea.

v. 13 *D.* 29 *Eliz.* 2. *Ancient Demesn* 41. And if the Tenant claim to hold the Lands of the Lord in Ancient Demesn by Knights service, *&c.* the same is a good cause for to remove the plea, because that no Lands which are holden of the Manor, which shall be taken Ancient Demesn, shall not be holden of the Lord by other services then Soccage, for the Tenants in Ancient Demesn, are called *Sokemans*, that is to say in English, Tenants of the Plough.

And

C. And therefore if the Lord of a Manor in Ancient Demeſn before the Statute of *Quia emptores terrarum*, maketh a feoffment in fee of parcel of the Lands of the Manor to hold of him by Knights ſervice, ſuch Tenant ſhall not have a *Monſtraverunt*, if he be diſtreined for other ſervices than of Right he ought to do, becauſe his Lands are not Ancient Demeſn of the King, and yet they are holden of the Manor which is Ancient Demeſn: But it is intended of ſuch Tenures, which ſhall do the ſervices of the Plough, *viz.* To Plough and till the Lords Lands, to mow the Lords Meadows, or other ſuch like ſervices as are for the maintaining of the Kings ſuſtenance or victuals, and his ſubjects, and for ſuch ſervices ſuch Tenants, have ſuch Liberties and Priviledges in the Law, that they may the more quietly uſe their Husbandry, and do their ſervices.

50 *E.* 3. *C. per Sidenham*, contr. if he refer but Socage Tenure.

Writ de Monſtraverunt.

D THe Writ of *Monſtraverunt* lieth for the Tenants of Ancient Demeſn, who hold by free Charter, and not for thoſe Tenants who hold by Copy of Court Roll, or by the Rod according to the cuſtom of the Manor at the will of the Lord. And theſe Tenants ought to be Tenants, which hold of a Manor which were in the hands of S. *Edward* the King and Confeſſor; or in the hands of King *William* the Conqueror, which Manors are called Ancient Demeſn of the King, or the Ancient Demeſn of the Crown of *England*.

49 *Ed.* 3. 23.

E And to theſe Tenants (who hold of ſuch Manors) there are many and divers Liberties, Gifts, and Grants by the Law, as to be quit of Toll, and Paſſage, and ſuch Impoſitions which men ſhall demand of them for the Goods and Chattels, ſold or bought by them in Fairs or Markets. And to be quit of Taxes and Tallages granted by Parliament; if not that the King lay a Tax upon Ancient Demeſn, as he may for ſome great cauſe whenſoever it ſeemeth good unto him. And alſo Tenants in Ancient Demeſn, ought to be acquitted of the payment of the expences of the Knights which came to Parliaments, and alſo

19 *H.* 6. 65. *per Norton* Tenants in Ancient Demeſn ſhall be acquit of Toll of things, which they ſell, which are arising of their Lands, and ſo of all things which they buy, which are for the Manurance of the Land; but Quere if they ſhall be quit for all things bought and ſold. Vide 161. they ſhall be quit of Suits to Leets and Hundreds. *V.* 22 *Eliz. Dyer* 377. *Register* 181. *Br. Ancient Demeſn* 49. 7 *H.* 6. 35. *Martin, &c.*

they ought not to be impanelled or put upon Juries or Enqueſts in the Country out of their Manor or Seigniory of Ancient Demeſn, if they have not other Lands at the Common Law, for which they ought to be charged, *&c.* And if ſuch Tenants, or any of them, who hold of the Manor of Ancient Demeſn, be diſtreined to do unto their Lords other ſervices or cuſtoms, then they or their anceſtors have uſed to do; then they may ſue this Writ of *Monſtraverunt* directed unto the Lord, commanding him, that he do not diſtrein them to do other ſervices or cuſtoms, then they have uſed to do; or they may have this Writ of *Monſtraverunt*, directed unto the Sheriff, and that is where the Writ of *Monſtraverunt* is firſt ſent unto the Lord, that he do not diſtrein his Tenants, *&c.* Or they upon this Writ ſued and directed unto the Lord, may have and ſue another Writ, directed unto the Sheriff, rehearſing, That where he hath ſent his Writ unto the Lord of Ancient Demeſn, that he ſhould not diſtrein his Tenants, *&c.* And if the Lord will not do it, and ſuffer the Tenants to be in peace, that then the Sheriff ſhall do and cauſe the Lord to ſuffer the Tenants to be in peace, and that he do not diſtrein them for other ſervices, then of Right they ought to do; and the form of the Writ directed to the Lord is ſuch.

40 Ed. 3. 44. Quere, if they ſhall have this Writ without being diſtreined.

40 E. 3. Theſe words prove that they may have this Writ before Diſtreſs.

The K. &c. to the Abbot of C. *Greeting. Thy men of the Manor of* I. *which is of the Ancient demean of the Crown of* England, *as is ſaid, have ſhown unto us, that thou exalteſt of them other cuſtoms, and other ſervices then they ought to do, and their Anceſtors Tenants of the ſame Manor had wont to do, in the times in which that Manor was in the hands of our Progenitors, heretofore Kings of* England, *or in our hand; therefore we command thee that from the ſame men thou exalteſt not, nor to be exalted permitteſt, other cuſtoms and ſervices then they ought to do, and their Anceſtors aforeſaid have accuſtomed to do in the times aforeſaid, and unleſs at our command thou doſt this, A. the Sheriff of* Lincoln, *have we commanded to cauſe it to be done. Witneſs, &c.* And upon this Writ they may ſue another Writ of *Monſtraverunt* directed unto the Sheriff, which ſhall be in this form. *The King to the Sheriff of* Lincoln, *&c. The men of the Abbot of* F. *which is of the Ancient Demean of the Crown as is ſaid, have ſhown us that the ſame Abbot exalts of them other ſervices, and other cuſtoms then they ought to do, &c. to there, in our hand. Wherefore the ſame Abbot we*

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have

have commanded, that from the ſaid men he ſhould not exact, nor to be exacted permit, other cuſtoms, or other ſervices then they ought to do, and their Anceſtors aforeſaid have accuſtomed in the times aforeſaid. And therefore we command thee, that unleſs the ſame Abbot at our command ſhall do this, thou cauſe it to be done; that therefore no more clamor we may hear for defect of Juſtice, &c.

B And it ſeemeth that by this Writ directed unto the Sheriff, the Sheriff may charge the Lord, that he do not demand nor diſtrein them for other ſervices then they ought to do; and that the Sheriff may make reſiſtance and reſcous unto the Lord if he diſtrein the Tenants for other ſervices, *&c.* And that the Sheriff may take the power of the County to reſiſt the Lord in ſuch caſe, or the Sheriff may command the Neighbors who dwell next to the Manor, that they reſiſt and do reſcous unto the Lord, if he will diſtrein his Tenants, *&c.* And it ſeems they may juſtifie the ſame by the commandment of the Sheriff, if he have ſuch a Writ ſent
C unto him, *&c.* And after the Writ directed unto the Sheriff, if the Lord diſtrein, the Tenants may ſue an Attachment againſt him returnable into the Common Pleas, or the Kings Bench, to anſwer to them for this contempt, and if it be found for them, they ſhall recover their damages.

D And note that the Writ of *Monſtraverunt* ſhall be ſued by many of the Tenants, without naming any of them by their proper names, but generally *Monſtraverunt nobis homines, &c.* But in the Attachment againſt the Lord by the Tenants, the Tenants ought to be named by their proper names thus. *The K. &c. If A. of B. C. of F. &c. men of the Abbot of M. of the Manor of I. which is of the Ancient Demean of the Crown of* England, *as is ſaid, ſhall, &c. Then put, &c. the foreſaid Abbot, &c. that he be before us, &c. whereſoever, &c. to ſhow why he exacts of the foreſaid men other cuſtoms, and ſervices, then they ought to do, and their Anceſtors Tenants of the ſame Manor have accuſtomed to do, in the times, in which that Manor was in the hands of our Progenitors heretofore Kings of* England, *or in our hand, if ſo it chanced, againſt our Prohibition, and have there the names of the pledges, and this Writ. Witneſs, &c.* *Com.* 129. 8 H. 6. 26.

E And there is another Writ of *Monſtraverunt*, where the Tenants of any Hamlet which Hamlet is parcel of a Manor of Ancient Demeſn are diſtreined by the Lord, they ſhall

have ſuch Writ. *The King, &c. Thy men of the Hamlet of F. which is a member of the Manor of B which is of the Ancient Demean of the Crown of England, as is ſaid, have ſhown unto us.* And it ſeems that in the Writ of Attachment, he ought, or may name all thoſe Tenants by their proper names, which are diſtreined after the Prohibition delivered unto the Lord; and it behoveth not to name other Tenants by their proper names, but in the generality, *Et homines, &c.* And if one of thoſe who is named by his proper name, will not ſue, *&c.* he ſhall be ſevered, *&c.* And that his Non-ſuit ſhall not grieve his Companions; and it ſeemeth that every one ſhall recover his damages ſeverally, becauſe they are ſeverally diſtreined, and one may be more damnified, then another, *&c.* And one Tenant may ſue the Writ of Attachment in his own name, by his proper name, and in the name of the other Tenants by general words, *&c. Et homines, &c.* And if the Tenants do ſue an Attachment againſt the Lord, becauſe he diſtreined them after the Writ of *Monſtraverunt* delivered unto him, and pending the Writ of Attachment, the Lord diſtrein them again by their Goods, then the Tenants ſhall have a ſpecial Writ of Attachment againſt the Lord, rehearſing the matter; and in the ſame Writ, the Sheriff ſhall be commanded to redeliver unto the Tenants their Goods, if the Lord have taken them, *&c.* And this Writ ſhall be ſued onely in the name of thoſe Tenants which are again diſtreined pendant the ſuit, and not in the name of them all; as the other Writ is ſued, and the Writ ſhall be ſuch.

The King to the Sheriff, &c. If A. *and* C. *men of the Abbot of* C. *of the Manor of* N. *which is of the Ancient Demean, &c. ſhall, &c. then put, &c. the foreſaid Abbot, &c. Why, when lately at the proſecution of the ſaid men to us, ſuggeſting the foreſaid Abbot to have exacted other cuſtoms, and other ſervices, then they ought to do, and their Anceſtors Tenants of the ſame Manor, &c.* to there, *Kings of* England. [16] *We command thee that thou put by Sureties, and ſafe Pledges the foreſaid Abbot, that he be before us from the day of* Eaſter *laſt paſt, for fifteen days whereſoever, &c. to anſwer the ſaid men, of the premiſſes, the ſame Abbot (having before us the plea of Attachment aforeſaid) the foreſaid men more grievouſly have diſtreined, and all their Goods and Chattels, and Beaſts in the ſame Manor found, hath taken away, and thoſe yet detaineth, that ſo they the plea of Attachment afore-*

aforeſaid, for poverty might be leſs able to proſecute, in contempt of us, and our commands aforeſaid, and retarding the proſecution of their right, and manifeſt depreſſion of their eſtate, and the Beaſts, Goods and Chattels aforeſaid, to the ſame men by ſufficient Surety; in the mean time cauſe to be delivered, and have there the names of the Pledge, and this Writ. Witneſs, &c.

And in this Writ of *Monſtraverunt*, the Plaintiff in the Writ of Attachment, may count ſeverally, and then they ſhall recover ſeveral damages. But they may count together in one Count, and declare how they were ſeverally diſtrained, *&c.* And it is not neceſſary to alledge in the count the day, or the place, where the Lord diſtreined them; and the form of the Count or Declaration is ſuch.

22 Ed. 1. 6. Rot. Walſh. 2. 49 E. 3. per Belk. nap.

A A. B. *ſummoned was to anſwer* C. D. *and* F. *and the men of the foreſaid* A. *of the Manor of* S. *which is of Ancient Demean of the Crown of* England, *&c. of a plea, why he exacts of them other cuſtoms, and other ſervices then they ought to do, and their Anceſtors Tenants of the ſame Manor to do accuſtomed, in the times in which that Manor was in the hands of our Progenitors, &c. Kings of* England, *and whence the ſame men by* T. S. *their Attorney complain, That whereas their Anceſtors of the ſame Manor, the time in which that Manor was in the hands of the Lord* Henry, *heretofore King of* England, *Great Grandfather to the ſame Grandfather of our Lord the King now, held their Tenements by certain ſervices, viz. every of them held one yard Land of the ſame Manor, &c. by fealty, and ſervice of five ſhillings, and doing ſuit to the Court of the ſaid Manor of* S. *twice in the year, viz. at the Feaſt of St,* Michael, *and the Feaſt of* Eaſter, *and if it happed that the Writ of Right was in plea in the ſame Court, to make ſuit there from three weeks to three weeks, &c. as long as that Writ ſhould hang in the ſame Court, and when the Lord the King, his Broughts and Demeans, &c. for all ſervices; and who more held of the foreſaid Manor, more Rent rendred, &c. and the ſame Tenants ſuch Eſtate had continued, from the time of the ſaid* Henry, *the Great Grandfather, &c. from King to King of the Progenitors, and until the time of the foreſaid Lord* K. Edward, *the Grandfather, &c. That the foreſaid* A. *Lord of the Manor aforeſaid diſtreined them* C. D. *and* F. *and other men, &c. to make ſuit to the foreſaid Court from three weeks to three weeks through the whole year, and taxing them high and baſe at his will, exalting of them for their ſons, and daughters marrying and other ſervices, and cuſtoms of villains which they ought not, nor uſed not to do, wherupon*

they ſay they are the worſe, and damage have to the value of one hundred pound, and thereupon they bring their ſuit, &c.

And whether they ſhall recover ſeverally damages upon that joynt count, it is a doubt, yet it ſeemeth reaſonable that they may, becauſe it is ſeveral in its nature, becauſe they count upon their ſeveral tenures, &c. And how that he hath diſtreined them ſeverally, by which it ſeems but reaſonable, that the Jury do enquire of the damages ſeverally if they paſs for the Demandants, or that ſeveral Writs of Enquiry of Damages be awarded in that caſe, if the matter be adjudged with the Demandants. But it ſeems no Tenant ſhall recover damages, but thoſe who are ſpecially named in the Writ of Attachment ſued upon the *Monſtraverunt*, and not the other men.

And note that the Lord of Ancient Demeſn ſhall not be put to anſwer to the Writ of Attachment ſued againſt him upon the *Monſtraverunt* before the Court be certified by the Treaſurer and Chamberlains of the Exchequer, whether the Manor be Ancient Demeſn; and therefore it behoveth the Plaintiffs in the *Monſtraverunt* to ſue forth a ſpecial Writ unto the Treaſurer and Chamberlains of the Exchequer, to certifie the ſame; and the Writ is ſuch.

The King, &c. to his Treaſurer and Chamberlains. Greeting. Becauſe concerning ſome certain cauſes we would be certified whether the Manor of L. *in the County of* L. *be of the Ancient Demean of the Crown of* England, *or not. We command you that ſearching your Book of Doomſday, that which thereof you finde under our Seal of the Exchequer, diſtinctly, and openly without delay you make us know, ſending us back this Writ. Witneſs, &c.*

And note that the Book which is called Doomſday Book was made in the time of S. *Edward*, and all the Lands which were in the ſeiſin, and in the hands of the ſaid S. *Edward* at the time the ſaid Book was made, are Ancient Demeſn, and the Lands which were in other hands, and are not named in the ſaid Book are Frank-fee; and thoſe Tenants which held in Baſe tenure, as by Copy of Court Roll, or by the Rod, cannot ſue nor maintain this Writ againſt the Lord; and the death of one Tenant, nor his non-ſuit ſhall not abate the Writ. And if the Frank-tenants and the Tenants by Baſe-tenure joyn in a *Monſtraverunt*, the Writ ſhall abate, but for the Tenants by Baſe-tenure.

2 *R.* 3. 1.
39 *Ed.* 3. 6.

Writ de Warrantia Diei.

A VVRit of *Warrantia Diei* lieth in caſe where a man hath day in any action brought againſt him to appear in proper perſon, and the King at or before the day ſend him in or about his ſervice, ſo as he cannot appear in Court at the day, then may he ſue forth this Writ directed to the Juſtices, reciting the whole matter, commanding them that they do not record his default for that day, for the cauſe before mentioned; and it is not material whether the cauſe be true, or not, when the King doth certifie, that the party is in his ſervice. For it ſeemeth by the words of the Writ, that the King by his Prerogative may warrant this default for a day, and ſo it ſeemeth, that if the Tenant in a *Præcipe quod reddat* at the *Grand Cape*, or the *Petite Cape*, retorned make default, that before Judgment upon this default, the King may ſend ſuch a Writ unto the Juſtices, rehearſing, that the party is in his ſervice, and commanding them, that his default do not prejudice him, and it ſtandeth with reaſon that the King may ſo do, becauſe that every one is bounden to ſerve the King in his buſineſs: [17]

B But what Proces ſhall the Court award, if the Tenant will not appear at the day of the default recorded, nor affer when the Writ of *Warrantia diei* comes unto the Juſtices; it ſeemeth a new ſummons ſhall iſſue out of the Common Pleas, to ſummon the Tenant anew, becauſe his default at his return is excuſed by the Writ of *Warrantia diei*. But if the Writ of *Warrantia diei* do not excuſe, but the default at the *Grand Cape*, then it ſeems a new *Grand Cape* ſhall go forth upon the firſt default, retorned at the ſummons of the *Præ-*

C *cipe quod reddat*. *Quære* of that. And the King may grant ſuch Writs to ſave two defaults, at two ſeveral days, *&c.* *Quære* of theſe matters, becauſe they are out of uſe at this day; and the form of the Writ is ſuch.

D *The King, &c. to his Juſtices of the Bench, Greeting. Know that* A. *was in our ſervice by our command Monday the morrow of the* 15 *of* Eaſter *next paſt; ſo that that day preſent he could not be at the plea, which is before you by our Writ, betwixt* B. *demandant, and the foreſaid* A. *Tenant of one Meſſuage with the appurtenances in* N. *where we the ſame* A. C. *againſt the fore-*

ſaid B. *thereupon called to warrant as he ſaith, and therefore we command you, that the ſaid* A. *for his abſence at that day be not put to a default, nor in any thing loſe, becauſe that day as to this, we will warrant. Witneſs, &c.*

The form of the Writ to ſue two defaults is, *The K. &c. as above. Know that* A. *was in our ſervice by our command Thurſday in the Octaves of St.* Hillary, *and Munday in the morrow of* All-Souls *next paſt; ſo that thoſe days he could not be preſent at the plea which is before you by our Writ, betwixt, &c. and therefore we command you, that the foreſaid* A. *for his abſence at thoſe days, be not put in default, becauſe thoſe days as to this to him, we ſhall warrant him. Witneſs, &c.*

And theſe two Writs are not granted, but by the King himſelf, by the Rule of the Regiſter, and the King may grant ſuch Writs unto the Major and Sheriffs of *London*, or unto the Biſhop of *Durham* in the *County Palatine*, or unto the Juſtices of Aſsiſe or in Eyre, or unto the Sheriff; and theſe Writs may be granted as well for the demandant and plaintiff, as for the Tenant, and then the Writ is ſuch.

The K. &c. Know that A. *was in our ſervice Munday the morrow of the Quindene of* Eaſter *next paſt, ſo that betwixt him* A. *demandant, and* B. *tenant, &c.* And there it ſhall be ſaid in *Craſt. Quind. Paſche*, becauſe that the pleas cannot be holden *Quind. Paſche*, becauſe that the Sunday which is the Sabbath day. And the King may grant this Writ by Teſtimony of his Steward, thus.

The K. &c. Becauſe A. *was before our Steward, and Marſhal, Munday in the Quind. of St.* John Baptiſt *next paſt. in divers Inquiſitions, which before the ſame Steward and Marſhal, the foreſaid day of Munday ſummoned were at* B. *as the ſame our Steward before us hath teſtified. We command you that the foreſaid* A. *for that that he came not before you in other inquiſitions which before you the ſame day ſummoned were, ye amerce not, nor iſſues, if into any before you on that occaſion he has faln, that ye permit him to loſe. Witneſs. &c.*

And it ſeems by this Writ, That the Juſtices ought to make a ſpecial Entry thereof, and to ſave the iſſue of this Jurror, and alſo to make a ſpecial Eſtreat of this matter, and to levy no iſſues upon theſe Jurors for whom ſuch Writs come unto the Juſtices.

And if a man be Eſſoyned of the Kings ſervice in any action, &c. whereas in truth he is not in the Kings ſervice; then

then the plaintiff or demandant may sue forth a special Writ out of the Chancery directed unto the Justices, rehearsing, that he is not in the Kings service, commanding them to proceed. But by the Statute of *Gloceſter*, if he do not bring his Warrant at the day given, he shall lose twenty shillings for the journey, and shall be in the Kings mercy, and the Essoyn dissolved; and if the plaintiff purchase such Writ directed to the Justices, that he is not in the Kings service, then the Essoyn shall not be adjourned, but shall be presently quashed, and he shall not have day by adjournment to bring in his Warrant to warrant the Essoyn.

Writ of False Judgment.

[18]

I WRit of False Judgment lieth where false Judgment is given in the County, or in the Hundred, or in other Court Baron which is not a Court of Record in a plea real or personal, as if in a Writ of Right Parent, or in other personal plea, there the party plaintiff or defendant which is grieved, shall have this Writ, and the Writ shall issue first A out of the Chancery; and if the false judgment be given in the Sheriffs County Court, then the Writ shall be directed unto the Sheriff himself, and shall be such.

22 *Ass* 64. *Br Error.* 120. It the Freeholder be recorded by plea, where it ought to be, by Writ it is Error, and not void *& coram non judice.* But where Judgment is given of Land, Contract, or Covenant, which is out of their jurisdiction,

B Henry, *&c. to the Sheriff of* Lincoln. *Greeting. If* A. *shall, &c. then in full County to be recorded, cause the plea, which is in the same County by our Writ of Right betwixt* A. *demandant, and* B. *tenant of one Messuage, and one hundred acres of Land with the appurtenances in* C. *whereof the same* A. *plaineth false judgment to be done him, and that Record have before our Justices at Westminster, such day under thy Seal, and by four legal Knights of the same County, of those who at that Record present were, and summon by good summon the foresaid* B. *that then he be there to bear that Record, and have thou there the summons, the names of the four Knights, and this Writ.*

it is void, *& coram non judice. Vide* 4, 5 *Ma. Dyer* 164. The Writ was challenged, because it was *sub sigillo tuo & sigillis quatuor legalium hominum ejusdem curiæ*, and good *ut semble.*

C And if the Tenant hath aliened the Land after Judgment given against the demandant, then the summons shall be made in the Writ against him who is Tenant of the Land, & against him who was Tenant at the time of the Iudgment given by these words, *viz. And summon by good summons the foresaid*

said B. *and* C *who that messuage and Land now hold, That there they be to hear, &c.*

And if the False Judgment be given in another Court D
Baron, then in the Sheriffs Court, then the Writ of False Judgment is called a Writ of *Accedas ad curiam*, and shall be directed unto the Sheriff, and the Writ is such:

The King to the Sheriff of Lincoln. *Greeting If* A. *shall secure thee his clamor to prosecute, then taking with thee four discreet and legal Knights of thy County, in thy proper person go thou to the Court of* B. *of* C. *and in that full Court to be recorded, cause the plea which is in the same Court by our Writ of Right, betwixt* A. *Demandant, and* B. *Tenant of one Messuage, &c. whereof* A. *plaineth False Judgment to be done him in the same Court, and that record, &c. under thy Seal, and by four legal men of the same Court, of those who at that record were present, and summon, &c. And have there the names of the foresaid four men, and this Writ.*

And in this Writ of *Accedas ad curiam*, he shall take with E
him four men, but it needeth not that they be Knights, but so shall it not be in the other Writ of *Recordari facias loquelam*, which is in the County: But both Writs shall be retorned under the Sheriffs Seals, and the Seals of four of the Suitors of the same Court; and in the Writ of False Judgment which is *Accedas ad curiam*, it is a good retorn for the Sheriff, for to say that after the receipt of the Writ, and before the retorn thereof that no Court was holden; and also that he required the Lord to hold his Court, and he would not, so as he could not execute the same: and thereupon the Justices shall award a *Distringas* directed unto the Sheriff to distrain the Lord to hold his court, and *Sicut alias, &c.* In a False Judgment against an Abbot the Plaintiff was F
Nonsuit, and the Abbot had a *Scire facias* against the Plaintiff, to shew why he should not have Execution, and to have the Judgment executed retornable at 15 *Pasche*, at which day the Plaintiff appeared, and assigned his Errors, and tendred Sureties to sue with effect, and prayed a *Scire facias* against the Abbot to hear Errors; and the opinion of the Court was, That he might assign the Errors against the Abbot, without suing any *Scire facias* against him, because they had day by the Roll.

If the Writ of False Judgment abate for default in the G
Writ, then the Plaintiff shall not have a *Scire facias ad audiendum*

diendum Errores, upon the Record, certified, because it cometh without an original, when the original abateth. But if the Plaintiff die, it seems, that if the False Judgment be given in the base Court, upon a Writ of *Droit Patent*, that then his heir shall have a *Scire facias ad audiendum Errores*, against him who recovereth upon that Record which is removed into the Common Pleas. And if the Plaintiff in the Writ of False Judgment be *Nonsuit*, whether the other party shall sue Execution upon this Record so removed against the Plaintiff, without suing forth a *Scire facias* is a question. But *Hill.* 23 *H.*6. the opinion was, That he shall have Execution without suing forth a *Scire facias*.

H And Tenant at will according to the custom of the Manor, which is Tenant by Copy of Court Roll, shall not have a Writ of False Judgment upon a Judgment given against him; but where False Judgment is given upon a Writ of Justices directed unto the Sheriff, the party grieved shall have a *Faux Judgment*, and not a Writ of Error, although the Judgment be of Debt, or Traverse over the sum of forty shillings. And a man shall not have a Writ of False Judgment, but in the Court where there are suitors; for if that be no suitors there, the Record cannot be certified by them. And upon False Judgment given in Court before Bailies, or others, who hold plea by prescription in every sum in debt by Bill, before them he shall not have a *Faux Judgement*, but a Writ of Error thereupon. *Quod vide M.* 4 *E.*4. in title *Trespass*.

14 *H.*4. 39. 7 *Ed.*4. 23. 34 *H.*6. 48. Contrary if the Justices be removed in the Kings Bench by a Pone. 2 *H.*4. 4. 21 *Ed.*3. 45. 45 *Ed.*3. 1. ac' Therefore it seemeth Error lieth in a Court of Pipowder. V. 13 *E.*4. 18. 6 *E.*4. 3 7 *Ed.*4. 23.

I In False Judgment upon a Writ of Right Patent, or a Writ of *Droit close*, the Plaintiff shall not assign Errors before the Records certified, as well the original as the residue of the Record. And the Writ of False Judgment lieth against a stranger to the Judgment, if he be Tenant of the Lord, without naming him, who was Tenant and party to the Judgment; otherwise is it of a Writ of Error, for there he ought to name him who was party to the Judgment, be he Tenant, or not.

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12 *H.*4. 23. contrary, and 21 *H.*6. 34. the party had a *Scire facias* to have Execution out of the Common Pleas.

A And where the Tenant loseth his Land by False Judgment in a Writ of Right in a Court Baron, he shall not have a Writ of False Judgment, before that the Demandant hath entred upon him, *&c. Quod vide, M.* 38 *E.*3.

B And where the Defendant in *Faux Judgment* after appearance by him maketh default, a Grand distress shall issue out against

againſt him. And if he again make default, or cometh and will not ſave his default, the Plaintiff in the Writ of falſe Judgment ſhall have Judgment to recover ſeiſin of the Land againſt him. *Quod vide M.* 13 *E.*2. And the Writ of falſe Judgment given in Ancient Demeſn, is ſuch.

The King to the Sheriff. &c. Greeting. If A. *ſhall, &c. Go thou to the Court of* B. *and to be recorded cauſe the plea, which is in the ſame Court by our Writ of Right, betwixt* A. *Demandant, &c. and have there the names of the foreſaid four men, and this Writ, and another Writ, &c.*

And in a Writ of *Droit cloſe*, if the Writ of the Demandant be abated, whereupon he bringeth his writ of falſe Judgment in the Common Pleas, and there the Judgment is reverſed, and the Writ Awarded good, then he ſhall hold plea in the Common Pleas, in nature of Proteſtation made in the firſt Writ; and if the Proteſtation were in the nature of Aſſiſe of *Mortdaunceſter*, the Juſtices ſhall direct a Writ unto the Sheriff to ſummon the Jurors to come out of Ancient Demeſn thither, & all the matter ſhall be tried & determined in the Common Pleas; & although the Judgment be given of the Land in the Common Pleas, yet the Land ſhall be Ancient Demeſn. *Quod vide M.* 3 *E.*3. in title of *Faux Judgment.*

And upon the Writ of *Faux Judgment* which is an *Accedas ad Curiam*, if the Sheriff return, That the Writ *ſo late came, that execution of it make he could not*, then he ſhall have a *Sicut alias* directed unto the ſame Sheriff; and if he return not that at the day, then he ſhall have a *Pluries* to the ſame Sheriff. And he may have theſe Writs of *Alias* and *Pluries* out of the Common Pleas, where the firſt Writ was returned tardy, if he will, or he may have them out of the Chancery, *&c.* See for this matter in the *Book of Entries*, *f.* 114, 115. And upon the *Accedas ad Curiam*, if the Sheriff return, that he will go unto the ſaid Court, *&c.* and there pray the Lord to hold his Court that he may do execution of the Writ, and that the Lord refuſeth to hold his Court, *&c.* by reaſon whereof, he cannot do execution of the Writ, then a *Diſtringas* ſhall iſſue out of the Common Pleas directed to the Sheriff to diſtrein the Lord; ſo that he diſtrein him to hold his Court at a certain day appointed by the Sheriff. *And that the Sheriff taking with him four diſcreet Knights, &c. of the County, &c. go to the Court, &c. and warn here in the* 15 *of Eaſter, &c. and that record then have, &c. and that he ſummon the*

the foresaid I. *that he be there to hear that record, &c. Which see Book of Entries, f.* 117.

F There is another Writ of *Faux Judgment*, when there is a plaint in the County of Debt or Trespass, without any Writ; then the Writ of *Faux Judgment* in the County shall be thus. *To be recorded cause the plea which was in the same Court, without our Writ, betwixt, &c. of a certain Trespass, &c. whereof the same* A *plaineth false Judgment to have been done him, &c.* And where *Faux Judgment* is given in another Court then the County, upon a plaint, or upon a Writ, then the Writ shall be thus. *The King to the Sheriff. Greeting. If* A. *shall, &c. then go thou to the Hundred of* A. *of* B. *or to the Court of* A. *of* C. *and in full Hundred, or Court, to be recorded, cause the plea which is in the same Hundred, or Court, by our Writ, or without our Writ, of that, That the same* A. *keep to the foresaid* B. *the Covenant betwixt them made of one messuage, with the appurtenances in* F. *whereof he plaineth, &c.*

G And if Baron and Feme be sued in a Court Baron by a Writ of Right, and the Feme is received for the default of the Husband, and plead there, and false Judgment is given against him, she and the Husband may have a Writ of False Judgment, as appeareth by the Register.

And there is another Writ there, where the Husband and Wife pray to be received in a Court Baron, in a Writ of Right upon the default of Tenant for term of life, and were not received; and for false Judgment given against the Tenant for term of life, they shall have a Writ of false Judgment, *&c.*

H There is another Writ of *Faux Judgment* in the Register; for him in the Reversion who prayeth to be received in a Court Baron, in a Writ of Right upon the default of two Tenants for life, where he was received for the Reversion of one of the Tenants, and the Receipt was counterpleaded for the Reversion of the other Tenant, and Judgment given, *&c.* And there it appeareth, that one Tenant was Tenant of certain parcel of the Land, and the other Tenant was Tenant of the other parcel of the Land.

I There is another Writ of *Faux Judgment* for him that hath Judgment given against him in the Court of a Lord, who hath power to hold pleas before his Bailies by the Kings Charter; but it seemeth, that in that case he shall have a Writ of Error, and not a Writ of *Faux Judgment*.

There

There is another Writ of *Faux Judgment* directed unto the Sheriff, *viz. Accedas ad Curiam: To our Court of* Winchester, *and there in full Court to be recorded, cause the Plea which was in the same Court without our writ, according to the custome of the city foresaid betwixt* W. *demandant, and* D. *tenant of one messuage in Winchester aforesaid, whereof the same* W. *&c. plaineth false judgement to be done him, &c.* But upon Affise of *Fresh force* a Writ of false judgment doth not lye but a Writ of Error. And if the Writ of false judgment be returned before the Justices of the Common Pleas, and the defendant comes and saith and averreth, that the Record is otherwise then it is certified, the averment shall be received, and that issue shall be tryed by the Country, or by those who were present in Court when the Record was made, and by others of the Country, and if they come not, then the Enquest shall be by the Country, as appeareth by the Statute of 1 *Ed.* 3. 5. *Rastal faux Judgment* 2.

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34 H. 6. 42.

Writ de Executione Judicii.

WRit *de Executione Judicii* lieth where Judgment is given in the Court of any Lord, upon a Writ of Right Patent, or upon a Plea of Debt, or Trespass in the same Court, or in the Hundred County, Court Baron, or in any other Court of Record, and if the Sheriff, or the Bailiff will not do execution of the Judgment, then the party shall have this Writ directed unto the Sheriff, or the Bailiff in which Court the execution ought to be, and if they will not do execution he shall have an *Alias* and a *Pluries* with this clause in the Writ of *Pluries*, *Or signifie unto us the cause why, &c.* And if they do not execution upon this Writ, or return not some reasonable cause wherefore they delay the execution, the party shall have an Attachment against him who ought to have done the Execution returnable into the Kings Bench, or into the Common Pleas; and if the plea be in the Lords Court Baron, then the Writ of Execution shall be directed unto the Bailiff of the Court; but if the plea, and the Judgment be given in the Sheriffs Court, as in the County Court, then the Writ shall be directed unto the Sheriff himself to do execution, and the *Alias* and *Pluries* shall be to the same Sheriff, and if they will not do execution of the Judgment, then an Attachment against the Sheriff shall be directed

directed unto the Coroners retornable as aboveſaid, to anſwer, *&c.* And ſo if the Writ *de Executione Judicii* be directed to the Bailies of any Court of any Lord, or unto the Bailies of a Hundred to do Execution, and at the *Alias* and the *Pluries* they will do nothing, the Attachment ſhall be to the Sheriffs againſt the Bailies retornable as aforeſaid to anſwer, *&c.* And if the Judgment be in a Court of Record, then it ſeemeth, that the Writ *de Executione Judicii* ſhall be directed unto the Juſtices of the ſame Court where the Judgment was given to do execution, and not unto the Officer of the Court. For if the Officer of the Court will not execute the Writs directed unto him, nor retorn them as he ought, the Judges of the Court may ameree him; the form of the Writ is. Henry, *&c.* Lancaſter, *Greeting. We command thee that execution of a Judgment lately given in thy County of a Plea, which was in the ſame County by our writ of Right, betwixt* A. *Demandant, and* B. *Tenant of one Meſſuage with the appurtenances in* I. *without delay thou cauſeſt to be made. Witneſs, &c.*

Writ de Error.

28 *H.* 6. 11. The form of Writ of Error to the Juſtices of the Common Pleas is *Job. Priſot Capital. Juſt. & ſociis ſuis & non Capital. Juſt.*

D A Writ of Error properly lieth where falſe Judgment is given in any court, which is a Court of Record, as in the Common Pleas, or in *London*, or other City, or other place where they have power to hold plea by the Kings Charter or by preſcripion in any ſum in debt, or treſpaſs over the ſum of forty ſhillings. And if falſe Judgment be given in *London*, or other place which is a Court of Record, the party grieved ſhall have a Writ of Error, and this Writ may be retorned into the Common Pleas, or into the Kings Bench, at the pleaſure of him who ſueth the ſame.

tantum for the Records there, are not before him alone. But in the Exchequer the Writ is not *Theſaurario & Baronibus*, but *Baronibus tantum*. 34 *H.* 6. 27. Error was brought 3. *die* from the Retorn where the Judgment was the firſt day, and well, becauſe after the Judgment. 15 *Ed.* 4. 18. If a Record be removed out of the Exchequer into the Exchequer Chamber by Error, when Judgment is given, all ſhall be remanded into the Exchequer and Execution ſhall be awarded there, but that is by the Statute of 31 *Ed.* 3. 12. otherwiſe it is of other Courts.

B And when the Record is removed by Writ of Error into the Common Pleas, or Kings Bench, then the Plaintiff ought to aſſign his Error, before he have a *Scire facias* againſt the Defendant *ad audiendum Errores*. And if he aſſign divers things for errors, which the Court thinketh to be no errors, he

37 *Aſſ.* 17. For aſſignment of many Errors in Law.

38 *H.*6.30. Note that the party assigned Error upon an issue, and the Court saw the Original that it was not good, for it was *ex assignatione* where it ought to be *ex divisione*, and therefore the Court *Ex Officio* did abate the Writ.

he shall not have a *Scire facias* upon this assignment. But after Errors assigned, and a *Scire facias* awarded against the defendant upon that assignment, he shall not *Assigne an Error* in fact, as to say, That the Plaintiff was dead at the time of the Judgment, or before the Judgment, *&c.* But he may assign as many Errors as do appear in the Record, and it shall not be said a double assignment. But he shall assign for Error, but one Error in fact, because this Error in fact shall be tried by the County, and the Errors in the Record shall be tried by the Justices.

And upon a Writ of Error, the Record it self shall be removed, and not the Transcript of the Record, for upon a Transcript of a Record a man shall not assign Errors if it be not upon a Writ of Error sued upon Transcript of a fine, there he shall assign Errors upon the Transcript of the note of the fine; & if the Justices do conceive it Error, then they shall send for the note of the fine, and shall reverse the same.

In a Writ of Error when the Record cometh in Court if the Plaintiff all that Term do not assign his Errors, and although that he do assign his Errors, if he do not sue a *Scire facias ad audiendum Errores* against the defendant returnable the same Term, or the next Term; all the matter is discontinued, and the next Term he ought to sue a new Writ of Error out of the Chancery, upon that Record directed to the Justices, before whom the Record is removed to proceed upon the Record, *Quæ coram vobis residet.*

2 *H.*7.12. 35 *H.*6 12. If the Writ of Error hath longer day of return then it ought to have, the Justices of the Common Pleas may shorten the day.

The form to assign Errors, is to put a Bill into the Court, and to say in the Bill *in hoc erratum est, &c.* and to shew in certain in what things; and *in hoc erratum est*, and shew in certain an other thing; and so of the rest in which he will assign the Errors: But to say *in omnibus erratum est* is not good, because of the incertainty.

5 *H.*7. 3. 8 *H.*9.10. 7 *H.*7.4. 21 *H.*6.43.

And in a Writ of Error, he ought to assign his Error in a proper person, and not by Attorney where he is in Execution by force of the Judgment. And in a Writ of Error upon Judgment given in the Common Pleas, the Plaintiff cannot assign for Error, that the Justices of the Common Pleas did not give that Judgment, but the Clerks of their own heads, neither can he assign for Error, that the Jurors gave their Verdict for the defendant, and that the Justices erred it for the plaintiff, and gave Judgment for him, because that this assignment is contrary to that which the Court doth as Judges, *&c.*

And

And if a man be vouched and entreth into Warranty and loseth, he may have a Writ of Error, and assign the Errors which hapned betwixt the Demandant and the Tenant, or betwixt the Demandant and the Vouchee. And so he in the Reversion, who prayeth to be received upon the default of Tenant for life, or for his faint pleading, if he be received, and pleadeth and loseth, he shall have a Writ of Error, and assign the Writ of Error betwixt the Demandant and the Tenant, or between the Demandant and him who prayeth to be received. And if Tenant for life loseth by default, he in the Reversion shall have a Writ of Error, although he were not received, nor prayed to be received, and shall assign for Error, the matter which was betwixt the Demandant and the Tenant, who lost by default. 50 *E.* 1. *Ass.* The Reversion was granted to one Pendant, the Writ against the Lessee for life; or if the Tenant in Fee pray in aid of a stranger, *quere*. For in these cases he in the Reversion shall have Error.

D A man shall assign an Error in Law as the case is; as if the Husband and Wife levy a Fine of the Lands of the Wife unto a stranger, the Wife being within age, they shall have a Writ of Error, during the nonage of the Wife, and shall assign that for Error, and that is an Error in Law of the Court. And so in a Writ of Entry sur Disseisin, if the original Writ want these words in the Writ, *Which he claims to be his right and inheritance*; if the Tenant admit of the Writ, and plead to the action and loseth, he shall not assign this fault in the Writ, because he hath admitted the Writ to be good by his plea. And so in a Writ of Detinue of Charters concerning certain Lands, if the Plaintiff in his Count do not declare the certainty of the Land in the Court, if the Defendant do admit the Court good, and pleadeth unto the action and loseth by Judgment given, in a Writ of Error sued by him, he shall not assign for Error the fault in the Count, because he hath admitted the same to be good by his plea. *Tamen quare.* E 50 *E.* 3. But *quare* if the Judgment shall be reversed, and that Execution shall be awarded, or it shall cease during the life of the Husband. 20 *Ass.* 2. ac' 21 *E.* 3. *Fine Error* 4.

7 *H.* 6. 39. Matter in suit must be pleaded, and shall not be assigned for Error. 8 *Ed.* 4. 19. By *Piggot* and *Choke*. If Joynt-tenancy, General-tenancy, Misnomer, taking of Husband, Pendant the Writ and the like, which prove the Writ abatable; there if the party plead other matter, and admit the Writ, he shall not have Error: *Contra*, of death or other thing which prove the Writ abated.

F And a man shall not assign for Error, a thing which is for his advantage, as to sue and assign for Error that he had day, and that the day was for longer time then the common day; and so he shall not assign for Error that he was Essoyned; 8 *H.* 5. 2.

where he ought not to be eſſoyned, or had aid granted unto him where he ought not to have had aid, becauſe theſe things are for his advantage.

If falſe Judgment be given before the Juſtices of the Biſhop of *Durham* in the County Palatine, there the party grieved ſhall have a Writ of Error there before the ſame Biſhop. *M.* 14 *E.*3. And if he give falſe Judgment, then the Writ of Error ſhall be ſued in the Common Pleas, or in the Kings Bench.

40 *Ed.*3. 15. *V.* 21 *Ed.* 3. 46. *Br. Error* 65. and *Tryal* 35.

And if falſe Judgment be given for the King in any ſuit or action, the party grieved ſhall have a Writ of Error and *aſſign his Errors*, without ſuing forth any *Scire facias* againſt the King *ad audiendum Errores*, becauſe that the King is always preſent in Court, and that is the cauſe that the form of Entries of Suits for the King is ſuch. Chriſtopher Hales *Attorney of our Lord the King, who for our Lord the King follows, &c. Comes here into the Court, &c. and not our Lord the King by* Chriſtopher Hales *his Attorney comes here into the Court*, becauſe that the King is always preſent in Court.

19 *H.*6.12. Falſe Judgment in *Wales* before Juſtices, Errors there ſhall be reverſed in *B. R.* if there be not Juſtices there; but by *Forteſcue*, it ſhall be reverſed in Parliament.

Error in the Kings Bench in the Proces where it is the default of the Clerks, ſhall be reverſed in the ſame Court by a Writ of Error, ſued by the party before the ſame Juſtices: But not without ſuing of a Writ of Error, although it be the ſame *Term*. But in the Common Pleas after Judgment given the ſame Term, the Juſtices may reverſe their own Judgment upon Error in the Proces, or for default of the Clerks, without any Writ of Error ſued forth: But in another Term, the party ought to ſue forth a Writ of Error thereupon returnable into the Kings Bench: But of an Error in Law which is the de-

19 *H.*6.12. Error in County *Palatine* ſhall be reverſed in *Br. R.* 21 *H.*7 32.

Per Fineux Erroneous Judgment in County *Palatine* ſhall be reverſed there by Commiſſion. 37 *H.* 6.13. Error in Chancery reverſed in Parliament. But ſee 24 *El. Dyer* 315. That Error upon a *Scire facias* upon a Recognizance was reverſed in *B.R.* which ſeemeth contrary to 37 *H.*6.13. 7 *H.*4. 17. 2 *H.*7.13. 2 *H.*7.13. it is ſaid if any be to reverſe utlagery in felony; when he cometh upon the Indictment he ſhall aſſign his Error before he proſecuteth his Writ of Error. *Vid.* 4 *Ed.*4. 41. 7 H.6.28. *Hidebrands* caſe. 19 *H.*6.2. 25 *Ed* 4 78. 37 *H.*6. 17. *Per* three Juſtices. If a man be utlage notwithſtanding a *Superſedeas*, and appear and plead in the Common Pleas, the utlagery ſhall be reverſed in the ſame place, although it be in another *Term*: But contrary, if it be in another Term, and the Defendant doth not appear and plead.

fault

fault of the Iuſtices, the ſame Court cannot reverſe the Iudgment by a Writ of Error, nor with a Writ of Error, but this Error ought to be redreſſed in another Court before other Iuſtices by a Writ of Error.

K And he which confeſſeth the Demandants action, ſhall have a Writ of Error to reverſe that Iudgment, againſt his Confeſſion upon Erroneous Iudgment given.

L In plea of Land againſt the Tenant, and the Tenant dieth, he who is heir of the Tenant to that Land ſhall have a Writ of Error, and not he who is his heir at the Common Law, as in Borough Engliſh, if the Tenant loſe the Land by Erroneous Iudgment, the yongeſt ſon ſhall have the Writ of Error; and ſo he which is heir unto the ſpecial Tail ſhall have the Writ of Error, if the Land be loſt by Erroneous Iudgment. The Tenant may have one Writ of Error, and the Vouchee another Writ of Error upon the ſame Iudgment; and ſo the Tenant, and the Tenant by Receit, and all prepending at one time. And an Executor or Adminiſtrator ſhall have a Writ of Error upon a Iudgment given againſt the Teſtator for debt or damages. And ſo the heir ſhall have a Writ of Error to reverſe an Outlawry of Felony pronounced againſt his Father, to reſtore the blood betwixt him and the Father. And if a man plead in any action, and the Iuſtices will not allow thereof, and the party makes his Bill upon it, and prayeth that the Iuſtices will ſeal this Bill of his Acceptance or Plea, and if they do according as is contained in the Statute of *Weſt* 2. *cap.* 3. The party grieved ſhall have a Writ of Error, and may aſſign Error upon that Bill ſo ſealed, and alſo in the Record, or in one of them at his pleaſure; but this Bill ought to be ſealed by the Iuſtices before Iudgment given by them, and not after, as appeareth *Anno* 11 *H.* 4. 52, 65, 92.

9 *H.* 4. 19. The daughter to the Tail brought Error, although a ſon were heir at Common Law. *Vid.* 1 *Ma. Dyer* 89, 90. 20 *Ed.* 3. *Fol. Error* 2. 12 *H.* 4. 65.

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M

N

A The Succeſſor of an Abbot, Prior, or Parſon, or ſuch Bodies Corporate, ſhall have a Writ of Error of a Iudgment given againſt their Predeceſſor, of all things which touch the Succeſſion or Corporation. But if a man recover againſt a Parſon or a Biſhop, debt or damages by Iudgment, or action perſonal, their Executors ſhall have their Writ of Error upon that Iudgment, and not their Succeſſors, becauſe that matter doth not concern the Corporation.

Vid. 3 *H.* 4. the laſt caſe. *Vid. Dr.* 21. *L. M, N.*

B If a man ſue forth Execution erroneouſly againſt the

Recognisor upon a Recognisance, the Feoffee of the Recognisor shall have a Writ of Error. If a man purchase his pardon of an Outlawry, yet he may have a Writ of Error to reverse the Outlawry. *H.* 18 *E.* 9. But if a man do disclaim in a *Præcipe quod reddat* of Land, and the Demandant doth recover, the Tenant shall not have a Writ of Error against his own Disclaimer: But if he plead *Nontenure*, and the same be found against him, for which the Demandant recovereth, the Tenant shall have a Writ of Error. H. 6 *E.* 3. A man condemned shall not assign Error in the Proces; but in the Original Writ he may.

It is no Error to suffer one to make Attorney in an action in which he ought not to make any Attorney.

Upon False Judgment given in the Common Pleas in *Ireland*, the Writ of Error ought to be sued there, and retornable in the Kings Bench in *Ireland*. But upon a Judgment given in the Kings Bench in *Ireland*, the Writ of Error shall be sued and retorned in the Kings Bench in *England*.

When the Record cometh in Court by a Writ of Error, the Plaintiff shall assign his Error, and shall have a *Scire facias* before the Record shall be entred, for the same shall not be entred before the parties have day by the *Scire facias*.

And the Proces in this Writ is *Alias* and *Pluries*, and upon that Attachment shall be awarded against the Judge who ought to retorn the Record, to whom the Writ was directed, and the *Pluries* may be retorned in the Common Pleas, or in the Chancery, if the *Pluries* issueth to the Justices of the Common Pleas to remove the Record; and if the Writ issueth to another base Court, the *Pluries* ought to be retorned into the Chancery, or into the same Court, it is made retornable. And if it be retorned into the Chancery with the Record, the Chancellor himself with his own hands may put the Record into the Common Pleas without any Writ of *Mittimus* thereunto, and that as well as if he had sent a *Mittimus* with the Record.

28 E. 3. 25. 27 Ass. 24. Error 71. Yet the Lord by Escheat shall not have Error.

45 Ass. 8 and 10 9 Ed. 4. 14. That a stranger shall not have Error.

6 Ed. 3. 7. Fitz. Error 78.

21 H. 7. 31. 5 E. 2. Error 89. No Error shall be brought here but upon default of Justice of the Kings Bench in *Ireland*. And note there it is said, That there is no original here, but the same remains there, and so is 27 Ass. 52. Fitz. Ass. 328.

Error in London.

HNote that if any Erroneous Judgment be given in the Courts before the Sheriffs of *London*, the party grieved ſhall have a Writ of Error out of the Chancery directed unto the Sheriffs to bring that Record before the Major and Aldermen in the Huſtings of *London*, which Huſtings is a Court holden before the Major, *&c.* And there the Record ſhall be examined, and if there be Error, they ſhall reverſe the Record there by the cuſtom of the ſaid City; and if the Sheriff after the Record is removed before the Major, *&c.* in the Huſtings will award Execution upon the Record againſt the party, The party againſt whom the Execution is awarded, ſhall have a ſpecial Writ out of the Chancery directed unto the Sheriffs, That they take ſufficient Sureties of the party, to ſatisfie the King, and alſo the party of that which appertaineth unto them, if the Judgment be affirmed, and that they ſurceaſe to do execution; and if they have taken the party in execution that they deliver him out of priſon, and the form of the Writ is ſuch.

The K. &c. To the Major and Sheriffs of London. *Greeting. Of the part of* R. *&c. it is ſhown us, that whereas according to the cuſtom in the City foreſaid, in caſe when any either Plaintiff or Defendant plaineth, that in the plea which was in our Court before the Sheriffs of the City foreſaid, any errors intervene, and the Record and Proces of thoſe Pleas, becauſe of the error intervening would make to come into the Huſting of the City foreſaid, to have thoſe errors corrected the Sher. of this City execution of the former Judgment before them given, to make ought to ſuperſede hanging in the Huſting the Records and Proces of thoſe pleas indiſcuſſed; and we lately at the proſecution of the foreſaid* R. *ſuggeſting manifeſt error in the Record and Proces of a plea, which was before you the foreſaid Sheriff in our Court of the City aforeſaid by our Writ, betwixt* A. *and the foreſaid* R. *of that that the ſame* R. *&c. to have intervened. We command you that the Record and Proces of the ſame before you in the Huſtings foreſaid to come you cauſe, the error if any there be to correct, you notwithſtanding the Sher. (hanging in the Huſting aforeſaid the ſaid plea of error indiſcuſſed) execution of the former Judgment cauſe to be*

A Feme Covert was received in the Common Pleas to acknowledge a Deed inrolled, where they have not power to examine her without a Writ. *Quere.* If Error, for it is not adjudged, if it be Error or not. *Quere*, the uſage at this day; ſo of an Infant. 21 E. 3. 29. *Br. Error* 62. *P.* 32 H. 8. That a Statute nor a Deed inrolled ſhall not be taken by the Common Law of an Infant or Feme Covert. Contr. by the cuſtom of *London*, per 29 H. 8. 93. 7 Ed. 4. 5. *Lin.*

be made less just'y, to the no small loss, and grievance of him R: You therefore we command, that if it be so, that the same R. shall finde you sufficient security to satisfie as well to us, that which in this part to us belongeth, as to the foresaid A. of the arrearages and damages to him in this part adjudged, if it happen the first Judgment to be affirmed, and to do further, and receive what our [23] *Court shall consider in this part, then Execution of the former Judgment to do you supersede, hanging in the Hustings aforesaid the plea of Error aforesaid; and if the same R. by occasion of that Judgment be taken, and in our prison detained, then him R. from that prison, if by occasion aforesaid, and no other, he be detained in it, by security foresaid, in the mean time to be delivered: cause ye, that his said plea of Error prosecute he may. Witness, &c.*

And it appeareth by this Writ, that a man shall have an action against any person in *London*, by original out of the Chancery, directed unto the Sheriffs of *London*, and that they shall hold plea thereof. And a man shall have the like Writ of Error upon a Judgment given in *London*, before the Sheriffs, by plaint sued there before them, without any Writ original sued, &c. And the Writ of Error shall be directed unto the Major, and also to the Sheriffs, although that the Judgment be given in the Sheriffs Court before them, to remove the Record into the Hustings to reverse it there, if, &c. And the form of the Writ shall be thus:

The King to the Major and Sheriff of London. Greeting, &c. Because in the Record and Proces, and also in giving judgment of a plea, which was in our Court of the City foresaid before you the foresaid Sheriff without our Writ, according to custom of the same City betwixt H. and R. of a certain Tresp ass, to the same A. by the foresaid R. done, as is said, Error manifest hath intervened, to the grievous damage of him R. as from his plea we have received. We, the Error if any be in due manner to be corrected, and to the parties foresaid, full and speedy justice to be done, willing in this part, command you, That if judgment thereupon be given, then the Record and Proces of the plea foresaid, before you in our next Hustling of the same City to come, and these in the presence of the parties foresaid by you the Sheriff, as to this to be forewarned. If they will be present to be recited, and diligently examined, and the Error if any there be in this part, in due manner to be corrected, and to the parties foresaid full and speedy justice thereupon to be done you cause, as of right, and according to the custom of the City foresaid is to be done. Witness, &c.

And

And the Writ of *Supersedeas* unto the Sheriff, to cease to do execution pendant, the Writ of Error may be made and contained in the same Writ of Error, which is directed unto the Major and Sheriffs to remove the Record into the Hustings.

34 *H.* 6. 42 When Error is sued upon a Judgment before the Major, it shall be at St. *Martins*, and

D And if Erroneous Judgment be given in the Hustings in *London*, before the Major and Sheriffs there, then the party who will sue to reverse that Judgment, shall come into the Chancery, and there sue a Commission directed to persons to examine the Record and Proces, and the Errors, and thereupon to do Right. And the Commission shall be thus.

then the Major and Aldermen shall have forty days to be advised of their Records, and the Recorder shall record the same, *Ore tenus.*

E *The King to his welbeloved, &c.* B. *and* S. *Greeting. Of the part of* B. *we have received that in the Record and Proces, and in giving Judgment of the plea which was before the Major and Sheriff of the City of* London, *in our Husting there, without our Writ, betwixt* C. *and the foresaid* B. *of a certain trespass, &c. done, as is said, Error manifest hath intervened; we in desell of the same Major and Sheriff, willing that Error (if any there be) in due manner to be corrected, and to the parties thereupon, fulness of Justice to be made. Have assigned you our Justices, together with those which we have associated to that Record and Proces to examine, and the Error (if any in them, or in giving of Judgment of the plea foresaid, happen to be found) to correct, and full and speedy Justice to the parties thereupon to do, according to the custom of the City foresaid And therefore we command you, that at a certain day which for this you shall appoint, To St.* Martins le Grand *in* London *you come, and in default of the foresaid Major and Sheriffs, the premisses you do, in form foresaid to do, &c. according to the Law and Custom of our Kingdom, and City foresaid, saving, &c. we command, &c. the same Major and Sheriffs, that at a certain day which to them make ye known, the Record and Proces of the plea foresaid, with all things touching them, and the parties foresaid before you, to the place foresaid come ye cause, &c. witness, &c.*

F And upon this Commission, the Justices shall award a Precept unto the Major and Sheriffs to send the Records and Proces, before them at a certain day, and to warn the parties to be before the Justices the same day, *&c.* And the King shall send another Writ unto the *Major* and Sheriffs

to have the Record and Proces before the ſaid Juſtices at the day aſſigned by the Juſtices, by their precept made unto the Major and Sheriffs. And upon this Commiſſion, the King may make aſſociation, and another Writ *Si non omnes* directed unto the Juſtices to proceed, although that ſome of them do not come, as he ſhall do in an Aſſiſe, or in Oyer and Terminer, &c.

And a man ſhall have a Commiſſion to examine the Errors, and Judgment given in the Huſtings in the time of another King, and in the time of another Major, and other Sheriffs, and the form of the Commiſsion is ſuch.

The King to his beloved, &c. Becauſe of the part of B. we have received, That in the Record and Proces, &c. to there, falſneſs of Juſtice. we have aſſigned you three, and two of you our Juſtices, the Record and Proces of the plea foreſaid, in preſence of the new Major and Sheriffs, by you concerning this, to be forewarned, If preſent they will be, at the Church of St. Martins le Grand *in* London, *to ſupervise and examine, &c.* as above, *to there, of the City foreſaid. And therefore you we have commanded that at a certain day, &c. appoint, To the ſaid Church of St.* Martins le Grand *in* London *ye come, and the premiſſes all and ſingular do, and explicate, in form aforeſaid to do, &c. according*

[24] *to Law and Cuſtom of the City aforeſaid. Saving, &c. We command alſo the ſame Major and Sheriffs, that at a certain day which you, &c. ſhall make them to know the Record and Proces of the plea foreſaid, with all things thoſe concerning which with you remain, as is ſaid, before you. &c. at the place aforeſaid to come they cauſe, and to the foreſaid Sheriff that they warn the foreſaid* B. *that he be there the Error, if any there be in the Record and Proces foreſaid, &c. as before in the premiſſes, &c. Witneſs, &c.*

And upon this Commiſſion, the King ſhall ſend another Writ unto the Major and Sheriffs of *London*, to ſend the Record and Proces before the ſaid Juſtices, &c. And the Writ in the beginning thereof ſhall rehearſe the effect of the Record and Proces; and alſo it ſhall rehearſe the Commiſſion, which he hath made to be directed unto certain Juſtices to examine, &c. and to do juſtice thereupon, and then he ſhall ſay in the end of the Writ. *And therefore we command you, that at a certain day which the ſame* R. F. *and* S. *or two of them ſhall make known to you, the Record and Proces of the plea foreſaid with all things thoſe concerning, which remain with you, as is ſaid, before them or two of them, to the place foreſaid, to*

come

cume you cauſe, and you the foreſaid Sheriffs, warn the foreſaid A. *that then he be there, that error (if any in the Record and Proces foreſaid, or in the giving of Judgment of the plea foreſaid to intervene ſhall happen) to hear, and farther to do and receive as our Court ſhall conſider in this part, and have, &c.*

A And if a man hath Judgment given for him in *London* before the Sheriffs in their Courts, or before the Major and Sheriffs in the Huſtings of *London*, and the Defendant to delay the execution of the Judgment, ſueth a Writ of Error to remove the Record before the Major, *&c.* into the Huſtings, or before certain Commiſſioners, if the Judgment be given in the Huſtings before the Major, *&c.* And after the party Defendant who ſued that Writ of Error, will by ſubtil means convey his goods out of the City, or otherwiſe waſte them, unto the intent that the Plaintiff may not have Execution of his goods, then the Plaintiff who had Judgment to recover, ſhall have a ſpecial Writ directed unto the Major and Sheriffs, that they provide that the goods amounting unto the value of what is recovered, be ſafely kept to ſatisfie the Plaintiff, if the Judgment be affirmed for him; ſo that Execution may be done of the firſt Judgment upon the ſame goods.

B And if Judgment be given before the Sheriffs of *London* for the Plaintiff, and the Defendant ſueth a Writ of Error and removeth the ſame before the Major and Sheriffs in the Huſtings. And when he hath removed it by a Writ of Error, if he will proceed no farther upon the Writ, *&c.* Then the Plaintiff who recovered, ſhall have a ſpecial Writ unto the Major and Sheriffs, that they proceed unto the Examination of the Errors, and to do Execution, if the Judgment be affirmed. And upon that Writ, he ſhall have an *Alias* and a *Pluries*, *vel cauſam nobis ſignifices* in the *Pluries*, if he will not proceed, *&c.* And this Writ was deviſed by *Parning*, then Lord Chancellor, and by him diligently examined, as it appeareth by the Regiſter.

C And if falſe Judgment be given in *Ireland*, the party may ſue a Writ of Error in the Kings Bench in *England*, and the Writ ſhall be ſuch.

The King to his beloved, and faithful A. *his Juſtice of* Ireland. *Greeting. Becauſe in the Record and Proces, Error, &c. to the grievous damage of him* B. *as from his grievous complaint we have received. We, &c. that Record and Proces of the plea foreſaid*

ſaid with all things thoſe concerning, To us under your Seal diſtinctly and openly ſend and this Writ; ſo that we thoſe may have ſuch a day, &c. That looking into the Record and Proces aforeſaid farther, thereupon we may cauſe to be done, what of right is to be done; and warn the foreſaid S. that then he be there to proceed in the plea foreſaid, and to do and receive what our Court ſhall conſider in the premiſſes. Witneſs, &c.

Error.

THE King to his beloved, and faithful I. of T. Greeting. Becauſe in the Record and Proces, and in giving of Judgment of the plea, which was before you, and your Companions, our Juſtices of the Bench, by our Writ betwixt A. and B. of a Record and Proces of Aſſiſe of Novel Diſſeiſin, which betwixt them ſued was, and taken at S. before our beloved, and faithful I. of I. and his Companions Juſtices, &c. Aſſign. of Tenements in W. which Record and Proces before you, for certain cauſes we have cauſed to come, Error manifeſt hath intervened to the grievous damage of him A. as from his plaint we have received; you we command, That if Judgment be thereupon given, then as well the Record and Proces of the plea foreſaid, before you thus had, as alſo the Record and Proces of the Aſſiſe foreſaid before you ſent, with all things thoſe concerning, to us under your Seal, &c. ſo that thoſe we may have, &c. that thoſe having looked into.

And this Writ of Error lieth where the Aſſiſe paſſeth in the County before the Juſtices of Aſſiſe, and afterward it is removed into the Common Pleas, and there is Judgment given: Now the party may ſue this Writ of Error, if there be any error in the matter; and upon that he may have an *Alias* and a *Pluries*, If the Juſtices will not rectifie the Record, &c. [25] And if the Juſtices of that Bench, or other Juſtices upon the Writ of Error, will not certifie all the Record, then the party who ſueth the Writ of Error, may alledge Diminution of the Record, and pray a Writ unto the Juſtices, who certified before the Record, to certifie all the Record, and the Writ ſhall be ſuch.

The K. &c. to his beloved and faithful W. of T. Greeting. Whereas we lately at the proſecution of L. of H. to us ſuggeſting in the Record and Proces, and alſo in giving of Judgment of the Plea which was before you, and your Companions, our Juſtices of the Bench, by our Writ betwixt W. of T. Demandant, and L. of R. Tenant

Tenant of fifteen Meſſuages, with the appurtenances in S. Error manifeſt to have intervened; you we commanded, that if Judgment thereupon were given, then the Record and Proces of the plea foreſaid, with all things thoſe concerning, to us under your ſeal diſtinctly and openly you ſhould ſend, and our Writ which to you thereupon came; ſo that thoſe we might have the morrow of S. Martin next paſt, wheresoever then we ſhould be in England, *and now of the part of the foreſaid* L. H. *to us it is ſhown, that though you by pretext of our Writ foreſaid, the Record and Proces foreſaid in ſome part before us at the ſame morrow have ſent, yet ſome of thoſe ſame Records and Proces, as alſo ſome other things thoſe touching as yet remain before you to be ſent, to the no ſmall damage, and grievance of him the ſaid* L. *of* H. *therefore you we command, that if ſo it be, then the reſidue of the Record and Proces aforeſaid, as alſo all other things thoſe touching, which as is ſaid reſt before you to be ſent to us under your ſeal diſtinctly and openly you ſend, and this Writ, ſo that we may have them, &c. And further in the premiſſes, &c.*

Dedimus Poteſtatem de Attornato faciendo.

C IT ſeemeth that before the Statutes which gave power unto a man to make an Attorney, that the Juſtices would not ſuffer that the Plaintiff or the Defendant, or the Demandant, or the Tenant ſhould make Attorney in any action, Suit or Bill in any Court of Record, nor in any other Court which was not a Court of Record, becauſe the words of the Writ do command the Defendant for to appear, *&c.* and that was always taken to be in proper perſon.

The form of Entry in every action for the Plaintiff or Demandant is, *And the foreſaid Pt' offered himſelf the fourth day, &c. and the foreſaid Def. came not, therefore is the Sheriff commanded that, &c.* By which it was taken, that the Plaintiff was to appear in proper perſon. But now by the Statutes he may make Attorney in a Court Baron, or other Courts, and may make Attor' for ſuit perſonal at the Hundred or other Court Baron; but for Suit real at the Leet, or at the Sheriffs Torn, he cannot do it by Attorney, but he ought to do the ſame in proper perſon. But it ſeemeth, that the King by his Prerogative, and before the Stat. might give Warrant unto a man to make Attorney in every action or ſuit, and that

as well unto the Demandant or Tenant, or unto the Plaintiff or Defendant; and that he may direct his Writs or Letters unto the Judges of Courts commanding them to admit and receive ſuch perſons by their Attorney, and that the Judges are bound to do the ſame. And it ſeemeth one cauſe is becauſe it ſhall not be Error, if the Judge do admit any Plaintiff or Defendant to make Attorney in any ſuit or action in which by the Law, he ought not to make Attorney. *Quod vide* in title of Error, *H.* 36 *E* 3. and title Attorney, *T.* 37 *H* 6.

Br. Attorney 84.

37 *H.* 6. 27

And if Tenant for life be impleaded in a *Pracipe quod reddat*, he in the reverſion may pray to be received to defend his right upon the default of the Tenant, or upon his faint pleading, and there he cannot pray to be received by his Attorney: But if he bring a Writ unto the Juſtices out of the Chancery, teſtifying that he hath made Attorney there, and rehearſe the cauſe wherefore, that is to ſay, becauſe he is ſick or other reaſonable cauſe, and commanding them to receive ſuch perſon by Attorney for him in the Reverſion, the Court ought, and is bound to receive him by his Attorney, and it is not material whether the cauſe put in the Writ be true or not, for it is not traverſable, *&c.*

Br. Attorney 82.

Aſſiz. 27. 8.

And the King by his Letters Patents may Licence a man to make a General Attorney *in omnibus placitis motis & movendis, & in quibuſcunque curiis*: And by his Letters Patents he may expreſs who ſhall be Attorney, *&c.* or may grant to make Attorney, whom or who he will without naming any Attorney by his ſpecial name.

And the King by his Writ may ſend to any perſon to receive Attorney for another, ſuch perſon generally as the other will name, or ſuch perſons ſpecially, and that may be as well for the Demandant or Plaintiff, as for the Defendant or Tenant. And the King may give authority unto one perſon to receive Attorney for another in all pleas, and in all Courts for two or three years. And the King may grant a *Dedimus poteſtatem* to receive Attorney for another, for a ſpecial cauſe recited in the Writ, becauſe he is languiſhing, or lame, or decrepit, *&c.* or other ſuch like ſpecial cauſe: Or he may grant a *Dedimus poteſtatem* in the generalty, to receive Attorney for another in all pleas, without expreſſing any cauſe in certain, wherefore he doth ſo.

Regiſter 9: *Br. Attorney* 84.

That is intended of the Kings Court, for it doth not extend to baſe Courts, as Court Baron, *&c.*

And alſo it appeareth by the Regiſter, that the King by his Letters Patents in the grant unto the Prior of *S. Johns* of

Jeruſalem;

Jeruſalem; that he may make two of his Friers, and name them, *&c.* in his place, which is in the place of a Proctor, That the two Friers ſhall make Attorney for the Prior, in every action which is pendant, or to be brought againſt him in any Court, *&c.* and for to challenge his Liberties, and for to defend them. *V.* 32 *H.* 6. 32. [26]

A And alſo the King by his Letters Patents may grant unto an Abbot, for the devotion that he oweth to the houſe, that he may make a general Attorney for all pleas, and in all Courts, and the ſaid Abbot may remove him and put others in his room as often as it ſhall ſeem good and needful for him ſo to do; and ſo by this it doth appear, that the King may grant unto all his ſubjects to make Attorneys in the ſame manner, without putting or ſhewing any cauſe in the Letters Patents.

B And it appeareth by the Regiſter, that the King may grant the ſame as well by Letters Patents under his Privy Seal, as by Letters Patents under his Great Seal, And when the King makes a general grant unto an Abbot, or unto any other to make ſuch general Attorneys, then it ſeems the Abbot ſhall come into the Chancery, or ſhall ſend his Deed under his Seal, unto the Chancellor, wiſneſing, that he hath made ſuch and ſuch perſons his Attorneys, *&c.* And thereupon the Chancellor ſhall make Letters Patents unto the Abbot, teſtifying, that he hath made ſuch and ſuch perſons his Attorneys in all Pleas and Courts; and upon theſe Letters Patents ſhewed unto the Court, the Judge ought to admit and receive thoſe perſons for Attorneys for the party; and theſe Letters Patents ſhall be entred upon Record in the Chancery.

C And the King may ſend his Writ unto the Juſtices of the Common Pleas, or unto the Juſtices in Eyre, or other Juſtices whatſoever, teſtifying, that ſuch a one hath made his general Attorney in all pleas and quarrels moved againſt him, or by him, and alſo to challenge his Franchiſes, or to defend his Franchiſes, commanding the Juſtices by the Writ, that they receive him for Attorney, *&c.*

There is another Writ alſo in the Regiſter, that the King by his Writ ſhall command his Juſtices in Eyre, that they admit and receive the claim of ſuch a one, to certain liberties which he ſhall make and claim before them by his Attorney, becauſe himſelf cannot be perſonally before them at the day.

There

There is another form of Writ to the Iustices, That they admit such a one by his Attorney, whom the said party shall make his Attorney by Letters Patents under his Seal. D

And a man may make his Attorney before the Iustices, without making an Attorney in Chancery, or without suing any Writ unto the Iustices, commanding them to admit any Attorney for the party Plaintiff or Defendant, as the common course is at this day for an Attorney, for every party to appear in every manner of action, that they can appear by Attorney, and put in their Warrants without any such Writs, if not, that they be in Writs of Entry in the Post or Writ, which is by Covin between the parties, or a Writ of Right; then the Iustices in discretion do not admit any man so appear as Attorney for the party defendant, unless the Defendant do before some Iustice confess to be his Attorney, and that the Iustices do record the Warrant, or otherwise, that he bring a Writ out of the Chancery, testifying that he hath there made Attorney, commanding them for to receive him for his Attorney.

42 E.3.31. 47 E.3.21. 21 E.4.77. But there are divers cases, in which the Iustices will not admit the defendant by Attorney; as if he come in *Cepi Corpus*, they will not admit him by Attorney, until he hath pleaded some plea, and then in discretion they use to suffer the defendant to make Attorney. But if the defendant come by *Cepi Corpus* upon the Exigent, the Iustices will not admit him to make Attorney, but give him day by Bail from Term to Term, until the matter be determined; and that seems to be at their discretion for his contumacy, for in that case if they do admit him to make Attorney, and to go without Bail; it is no Error, as it seemeth unto me. E

33 H.6.28. V.9 E.4. 36. 2 H.4.23. 3 H.42.

41 E.3.19. At the *Grand* or *Petit Cape* returned, the Tenant may appear by Attorney, and tender to wage his Law, and take day to wage the same, at which day he ought to appear and make his Law. F

37 H.6.27. &c. And a man shall make an Attorney against the King, in any action sued by the King. G

Upon a Rescous returned by the Sheriff, and an Attachment awarded upon it against him, the defendant shall not make Attorney; but upon his appearance shall be presently committed unto the *Fleet*; but if the King send a Privy Seal unto them, commanding them that they admit Attorney for him, the Court ought to receive the Attorney without appearance in proper person. H

And

I And a man ſhall ſue a Writ of Error by Attorney if he
K be not in Ward. In an Appeal the Plaintiff ſhall make Attorney againſt the Abettors, if he ſue againſt them a *Diſtringas, &c.*

5 H.7.7. one cannot aſſign Errors by Attorney.

L In *Quem redditum reddit*, the Defendant ſhall not make Attorney, but with aſſent of the parties.

1 H.7.27. 7 H.4.2.

In a *Quid juris clamat*, or *Per quæ ſervitia*, after a plea pleaded, the Defendant ſhall make Attorney; it ſeemeth likewiſe in a *Quem redditum reddit*.

1 H.7.29. 32 H.6.22. 39 Ed.3.26.

M In a *Præmunire* the Defendant ſhall not make Attorney without a ſpecial Writ directed to the Juſtices.

after 147.a 21 Ed.3.48 Hil. Br. Attorney 36.

N After a *Capias ad computandum* awarded, the Defendant ſhall not make Attorney.

25 H.7.9.

O A man may demand Conuſans of plea by Attorney.

9 E.4.2.ac. 32 H.6.22.

P The Plaintiff after appearance, ſhall make Attorney in an Appeal by the Statute of *Henry* the Seventh.

9 H.7.11. 3 H.7.10.

A He who pleads *Miſnoſmer* ſhall not make Attorney, *Quod vide*, P. 41 E.3. M. 45 E.3, Fitz Attorney 52.

Raſcal Murder 2.

B In a *Scire facias* upon a Charter of Pardon, the Plaintiff in the *Scire facias* ſhall not make Attorney, but with the aſſent of the other he may.

[27] 27 H.8.11. 41 E.3. Attorney 50.

C A Feme Covert may be Attorney for her Huſband.

2 R.3.9.

D At the *Sequatur ſub ſuo periculo*, the Vouchee ſhall not enter into the Warranty by Attorney.

Perkins 42. 11 H.4.28

E In *Attaint* the Petit Jury ſhall make no Attorney.

Newton ac.

F The Defendant ſhall not Attorney in *Maihem*.

21 H.7.39 cont.

G An Idiot ſhall not be received to ſue or defend in any action by Guardian, or by *Prochein amy*, but ought to be always in proper perſon, P. 33 H.6.20.

21 E.4.73. 33 H.6.18.

H An Infant ſhall ſue by *Prochein amy*, but if the Infant be Defendant in any action, he ſhall make his defence by Guardian, and not by *Prochein amy*. And the Court ſhall aſſign the Guardian for the Infant Defendant, and that is commonly one of the Officers of the Court, 40 Ed.3.16.

29 Aſſ.67. Aſſiſ.273. 3 H.6.17. Markham.

An Infant ſued a Writ of *Waſte* againſt his Guardian, and made Attorney in that action, 48 Ed.3.19.

34 H.6.32.

An Infant was received to ſue an action of *Debt* by his Guardian, 16 H 7.5.

it ought to be ſued in proper perſon by one of full age.

I Andra man ſhall not anſwer as Guardian unto an Infant who is Plaintiff or Defendant without a Warrant; but as *Prochein amy* to an Infant he ſhall ſue an action without a Warrant.

34 Aſſ.5. ac.

The

The Infant ſhall not remove his Guardian, nor diſavow K an action ſued for him by *Prochein Amy*, *Anno* 43 *E.*3. *Lib. Aſſ. & Anno* 27 *E.*3. *Lib. Aſſ.* 53.

And the King by his Letters Patents may make a general L Guardian for an Infant to anſwer for him in all actions or ſuits, brought or to be brought in all manner of Courts. Or may make two or three Guardians, joyntly and ſeverally to anſwer for him, or to bring any action for him, and at the requeſt of the Infant may grant by the ſaid Letters Patents, that the ſaid Guardians may make other Guardians, joyntly or ſeverally in their places, to ſue or defend for the ſame Infant in all actions and ſuits, which are brought or ſued or ſhall be brought or ſued after.

And the Infant ſhall have a Writ in the Chancery for to M remove his Guardian directed unto the Juſtices, and for to receive another, *&c.* and the Court at their diſcretion may remove the Guardian, and appoint another Gurdian.

3 H.6. 26. An Infant appeared by Guardian, although it be in a perſonal action; but *Quere* if he can ſue perſonal action by *Prochein Amy* 8 H.6.8. *Aſton.*

And ſee in the Regiſter after the Writ of *Protection cum* N *clauſula nolumus*, Writs directed unto the Bailies of Hundred, to receive & admit ſuch perſons by Attorney in Court which the party will make under his Seal, or otherwiſe, and alſo Writs of *Dedimus poteſtatem* to remove Attorneys made, and to put others in their places, or to remove any of the Attorneys, and to put another in his place. And if a man O make Attorneys in Chancery to anſwer, and Defendants in other Courts, he may come in Chancery and remove him, and make others his Attorneys; and thereupon he ſhall have a Writ unto the Juſtices of the Court where the Attorney is teſtifying, that he hath removed him, and made another his Attorney, commanding them for to receive him, *&c.* There is a *Dedimus poteſtatem* granted in the Regiſter to P receive an Attorney for him who is Vouchee, becauſe he is received for the default of Tenant for life; and a Writ

3 H.4.18. A Feme proceed to be received and plead, which was not by Attorney. 21 H.6.48. contr.

directed unto the Juſtices, to receive an Attorney for a woman, who prayeth to be received for the default of her husband, before ſhe be received: And another Writ unto the Q Juſtices, to receive Attorney for one Defendant, and Guardian for another Defendant.

In *Quale jus* awarded, where a *Scire facias* ſhall be awarded R againſt the Lords mediate and immediate, they ſhall have a Writ directed to other perſons to receive Attorny for them to appear to this *Quale jus* to defend their right, and upon certification

certificate thereof in the Chancery he ſhall have a Writ to the Juſtices before whom the *Quale jus* is to be tried, to admit him who is received attorney, and ſo returned in the Chancery, for atturney for the Lords in that action.

S In detinue of a word, where ſhall be enterpleading, they ought to appear in proper perſon and enterplead, &c. And yet upon reaſonable cauſe he make atturney in the Chancery, and ſhall have a Writ unto the Juſtices to receive him for his atturney, and rehearſe the cauſe wherefore; yet it ſeemeth it is not material whether the cauſe be true or no. before 25. c.

T Alſo there is another Writ in the Regiſter directed unto the Juſtices for him in the Reverſion where tenant for life is impleaded, commanding them for to admit attorney for him in the reverſion if the Tenant for life make default as he conceiveth he will, and teſtifie in the ſame Writ that he in the reverſion hath made ſuch and ſuch his attorneys jointly and ſeverally, commanding the Juſtices to receive them for atturneys, becauſe that he in the reverſion hath ſuch an infirmity that he cannot pray to be received in proper perſon. And the like Writ for a feme covert who hath a reverſion, and the Tenant for life is impleaded, and ſhe conceiveth that her husband will not pray to be received, &c. But in the writ it ſhall be mentioned, that the feme is decrepit, or hath ſome other infirmity that ſhe cannot conveniently come to be received in proper perſon.

There is another manner of writ for the Sheriff, or for the Eſcheator to cauſe the Barons of the Exchequer to admit attorneys for them to make their proffers in the Exchequer, and yet they are commonly bound in recoguiſance to do the ſame in proper perſon. And the writ is ſuch.

A *The K. to his Treaſurer and Barons of the Exchequer greeting;* [28]
Becauſe our beloved P. *of* B. *our Sher. of* Suff. *about certain high buſineſſes with which him we have ſpecially charged, is ſo much intending, that before you at our Exchequer this inſtant morning of S. Mich. or this inſtant Oct. of Eaſter next to come for his proffer then and there as the manner is perſonally preſent he cannot be, you we command that the foreſaid* R. *and* J. *Clerks whom the ſame Sher. for his proffer foreſaid before you at the ſaid mor. to do, before us in our Chancery in his place hath attorned, or either of them if both cannot preſent be in place of him the Sher. for theſe things ye receive this time of our ſpecial grace, him,*

the Sher. for his abſence, at that day, or the Oct. aforeſaid, not moleſting in any thing, or grieving. Witneſs, &c.

And the Eſcheator may have the like writ for his profers to make atturney; but it ſeemeth this is not a writ of courſe but upon a ſpeciall commandment directed unto the Chancellor by the King to make ſuch writ &c. And the king may ſend a writ unto the Treaſurer and Barons of the Exchequer to reſpite the accompt of the Sheriff, and of the Eſcheator, and the writ ſhall be ſuch:

The K. to the Treaſurer, and Barons &c. greeting: becauſe our beloved W. of K. our Sher. of Wilt. *about certain &c. as about is intending, that before you at our Exchequer at this inſtant mon. of S. Mich. next to come to his account of the iſſues of the Coun. foreſaid he cannot come, we have given him reſpite his account foreſaid to make untill the Octav. of S. Hillary next to come, and therefore we command you that him the Sher. that reſpite in the mean time to have ye permit. Witneſs &c.*

Protection.

PRotections are in diverſe forms, and of divers effects, and the King may grant them for divers cauſes. And there are four manner of protections, with the clauſe *We will*. One is a protection called, *Becauſe to paſs over*. And another protection, *Becauſe abroad*. And the third is a protection which the King by his prerogative may grant, and the ſame is where a man is a debtor unto the king, the king may grant unto him that he ſhall not be ſued, nor attached, but raketh him into his protection untill he hath paid the king his debt. But now by the Statute of 25 E. 3. *cap.* 19. it is Ordained That the creditor ſhall have an action againſt the kings Debtor, and ſhall have judgement againſt him notwithſtanding ſuch protections, But he ſhall not have execution againſt the Kings debtor who hath ſuch protection, unleſs he take upon him to pay the debt which the kings debtor owed unto the king, and then he ſhall have judgement and execution againſt the kings debtor for both debts, &c.

There is another Protection, *cum clauſula volumus*; and that is when the King ſendeth a man in his ſervice into the wars beyond the ſeas, or into the Marches of *Scotland*, and there he is detained and kept Priſoner, he ſhall have a ſpeciall

cial protection reciting the whole matter, and in the end of
D the ſame protection ſhall be ſuch clauſe, *The preſents not to be of force after delivery of the ſaid* R. *from the ſaid priſon if it happen him again to be delivered from the ſame*: and the form of diverſe of theſe Protections do appear in the Regiſter. But as the law is now, every Protection caſt ſhall not be allowed: For if the Protection be to endure for two or three years the Juſtices will not allow the ſame; and therefore the form of the *Protection* at this day is to endure for one year and a day after the date thereof, and then to ſue forth
E a new Protection if need be. And a protection may be caſt for the partie by a ſtranger as well as by the partie himſelf.
F And Protection *Quia Profecturus*, ſhall not be allowed if it be preſented hanging the plea, if he be not in a voyage Royal; and a voyage Royal is, where the King goeth to the war, or his Lieutenant, or his Deputy Lieutenant, and not otherwiſe.
G And the Plaintiff cannot caſt a Protection, for the Protection is always for the Defendant and ſhall be caſt for him if it be not in ſpecial caſes, where the plaintiff becometh defendant; But when a Protection ſhall be allowed, and when not, appeareth more plainly in the title of *Protection* in the great abridgement of the years, and therefore it is not needfull to ſhew it here.
H And by the *Regiſter* a man ſhall be by Protection when he ſtayeth, *upon the ſafe warding the weſt Marches of* England *againſt* Scotland, yet *Anno* 22. *E.* 4. ſuch Protection was diſallowed, But I am of opinion with the Regiſter.
I A Protection *Quia Moratur* upon the ſea was diſallowed *Trin.* 36. *H.* 6. becauſe that the ſea cannot ſtay, and by conſequence he cannot ſtay upon the ſea.
K And a Protection ſhall be allowed in a Court of antient Demeſn, or in other Court of Record, as *London*, &c. And when the plea is removed, the Protection may be allowed; and a Protection allowed for one defendant doth put the plea without day for all the reſt, If not that it be in ſpecial caſes, as in treſpaſs where they plead ſeveral pleas, and he ſhall ſue ſeveral *Venire facias* upon the iſſue joined againſt them, &c. 7 H. 6. 21. con. if they plead, *vide* Plea in Tref. 15. E. 4. 27. 4 H. 7. 3 b. 5.

And a protection ſhall be ſometimes diſallowed, for variance betwixt the Writ and the Protection, But ſee that in the title Protection in the Abridgements.

Protection ſhall be allowed for an Infant; but there are diverſe opinions amongſt the Juſtices if it ſhall be allowed for a feme Covert.

And how a Protection ſhall be made void, ſee title *Protection*, and in the title of *Repeal*. in the abridgements.

[29] There is another manner of protection, *with the clauſe We will not*, as appeareth in the Regiſter, and that is where an Abbot, or a Prior, or other ſpiritual perſon be in fear, or doubt that his goods, or Chattels, or his Cattel ſhall be taken by the Kings Officers for the Kings ſervice; they may purchaſe this manner of Protection *cum clauſula Nolumus*. And by the Regiſter appeareth that the King may grant unto a ſecular man, this writ as unto a ſpiritual man; and if he do ſo the ſame is good &c.

And a man may excuſe his default at the Grand *Cape* or Petty *Cape* by Caſting of a Protection.

And if a man be eſſoined of the Kings ſervice, the plaint. may have a ſpecial Writ directed unto the Juſtices to allow of the eſſoin, if he be not in the Kings ſervice, commanding them for to proceed &c.

And it appeareth by the Regiſter *fol.* 280. That there are divers manners of forms of Protections; where a man ſeeketh to travel the country with his merchandiſes, or to collect the alms for the poor of an Hoſpital or of the Church, then they may purchaſe letters patents of the Kings protection, commanding the Kings ſubjects for to defend them, and to maintain, aid, and aſſiſt them, and the form is ſuch.

The King &c. to all his Baylies and his truſtees to whom &c. greeting, A. hath ſupplicated us, that whereas he divers his buſineſs in divers of our Courts and elſewhere within our kingdome of England proſecuteth, and the ſame A. by occaſion of his proſecution fears as well for himſelf as his men and ſervants in their perſons and goods, becauſe of certain that malice him, and their procurement damage &c. Or thus, *hurt of his body, and loſs in his goods eaſily &c. and peril eaſily may happen, we will in this part graciouſly take care of his ſecurity, with peace and tranquility every where in our Kingdome willing to conſerve; have taken him A. and his buſineſs foreſaid in our ſaid Court and elſewhere within our Kingdom of England to be proſecuted there abiding, and thence to his own return and alſo his men, and ſervants, his things and goods whatſoever into our protection, and ſafegard ſpecially. And therefore you we command, that*

that him A. his ſaid buſineſſes in our Court and elſewhere in our Kingdoms aforeſaid (as is permitted) proſecuting their abiding, and thence to his own return, as alſo his men, and ſervants, things, and goods whatſoever, you maintain, protect, and defend; not doing them, or as much as lyes in you, not permitting others to do them any injury, moleſtation, damage, violence, impediment, or grievance, and if they be wronged, or injured, in any thing, that to them without delay cauſe to be amended whiles that the ſame A. any thing which to the prejudice of us, or our people, or againſt an Ordinance by the L. E. lately King of England *our Grandfather and his Councel lately thereupon made, and to the weakning of it may be, proſecute not, or attempt, or to attempt or proſecute preſume in any manner, in teſtimony of which thing &c.*

F And theſe Letters may be made and directed to Sheriffs, Admirals, Maiors and all other Officers &c. and thereby it appeareth that they ought to ſee and provide that ſuch perſons who have purchaſed ſuch Letters, have by reaſon of ſuch Letters favor and right done unto them; becauſe it appeareth the kings will ſo to be &c. and there is the like protection for thoſe who go with Pardons, or to make Collection for bridges or high-waies: and the like for ſpiritual perſons, and the like Protection for Merchants ſtrangers which go into the Country to gather their debts or to ſue for them &c. There is another form of protection which is ſuch.

G *The King &c. to all, and ſingular Sheriffs, Eſcheat. Maiors, Baylies, Miniſters, and to all our truſtie Lieges whatſoever, as well Commons of our Town of Southwark, as to others within the Liberties and without, theſe our preſent Letters who ſhall ſee or hear greeting. Know what we have taken into our protection ſpecial* T.W. *and his men and ſervants, manors, lands, and tenements, his goods, and poſſeſſions in London,* Southwark, *Hathm. and* H. *in the county of* S. *and in* S.C.D. *in the County of* K. *being, as alſo his writings, and muniments whatſoever, and therefore we command you, that him* T. W. *and his men ſervants, manors, lands, tenements, goods, poſſeſſions, writings, and muniments foreſaid, you maintain, protect, and defend, not doing to them, or to any of them permitting to be done, injury, moleſtation, damage, violence, waſt, deſtruction, burning of his houſes, or other goods, and chattels, or any other impediment or grievance, and theſe in the faith, love and ligeance by which*

ye are bound unto us, under our grievous forfeiture omit not, nor let any of you omit. In &c. of which thing &c. for one year to indure, Witneſs &c.

And another Protection for the Prior of St. *Johns* and ſet his protectors &c. And thoſe are of divers forme, as appeareth in the title of protection in the Regiſter, and therefore ſee them there: But theſe Protectors are by the king granted of Grace, for every man who is a loyall ſubject is in the Kings protection, but theſe protections are granted to move and excite the kings ſubjects, to aid and comfort thoſe who have ſuch Protections in their buſineſs which they have to do in the Countries for the cauſes mentioned in the Protections. And it appeareth by the Regiſter, That every ſpiritual perſon may ſue forth a protection for him and for his goods, and for their Farmours of their lands for their goods, that they ſhall not be taken by the Kings Purveyors nor their carriages or Chattels taken by other the King Officers. And it appeareth by the ſame protection that King *Edward* in the fourteenth of his reign by ſpecial ſtatute did grant ſuch privilege to the clergy, whom he took into his protection with their goods and carriages. And they may have a ſpecial commiſſion directed unto certain perſons to arreſt ſuch Purveyors or Officers, and to ſend them before the Kings Council there to anſwer their miſdoings in ſuch caſe. And for the ſame protection ſee the Regiſter fol. 289.

[30]

Writ de Droit de Advowſon.

4 E. 3. 18. Wil by Br. 7. 3. & Br. eſtates 65. tenant in tail brought this writ and recovered but an eſtate in tail. 24. Aſſ. 4. Br. tail 24. he may have Darrein preſentm.

A Writ of right of advowſon lyeth only for him who hath an eſtate in the advowſon to him and his heirs in fee-ſimple, or right of eſtate to him and his heirs in fee-ſimple in the Advowſon, and if he be diſtreined to preſent, then he ſhall have the Writ. But if a man have an Advowſon to him and the heirs of his body begotten, and for default of ſuch iſſue &c. the remainder unto him and his heirs in fee-ſimple, if he be diſturbed he ſhall not have this writ, but a *Quare Impedit*, becauſe he hath not title unto the advowſon but in tail, and he ought to maintain the action by that title that he claimeth the poſſeſſion of the advowſon, and that is of an eſtate in tail. And in this writ he

he ought to count of his own poſſeſſion, or of the poſſeſſion of his anceſtor, otherwiſe the writ doth not lye, and he ought to allege eſplees in the Parſon; as in taking of groſs
6 Tithes, Oblations, and Obventions unto the value of &c. And the Tenant ſhall come and make defence, and may join the Miſe by battail, or Grand Aſſiſe &c. And ſee the form of the Court, and the defence, and of joining the Miſe in the Book of *Entries*, *fol.* 90.

D And a man who claimeth to have fee ſimple in an Advowſon may have a Writ *of right of advowſon, of the moity of a Church, or of the third part, or of the fourth part of a Church &c.*

E And when a Parſon ſueth in the ſpirituall Court for Tyths which do amount unto the fourth part of the Advowſon againſt the parſon of another Pariſh, then that Parſon who is ſued in the ſpiritual Court may purchaſe a Writ which is called *Indicavit*; which writ is a Prohibition, and ſhall be directed as well unto the Judge of the Court as unto the party, that they do not proceed in the plea &c. And then the Patron of that Parſon who is ſo prohibited by the *Indicavit*, may have and ſue a writ of Right *of the Advowſon of diſmes*; and the form of the writ is ſuch.

Command A. that he render to B. the Advowſon of the Diſmes of the third part of the Church of S. or the fourth part, or moity of the Church &c.

And this writ is founded upon the ſtatute of *Weſt.* 2. *cap.* 5. in the end of the ſtatute, and doth not ly of a leſs part of the Tithes, then of the other part of the Church. But it ſeemeth that at the Common Law before the Statute, that a Writ of *Droit des Diſmes* lay and was maintainable, as *Command that he rend. the Advowſon of the Diſmes of the fifth part or ſixth part of the Church &c.* And that by the Statute of 18 *E.* 3. which is, Whereas Writs of *Scire facias* have been granted to warn Prelates and other Religious Clerks to anſwer *Diſmes* in our Chancery, and to ſhew if they have any thing, or can any thing ſay, wherefore ſuch *Diſmes* ought not to be reſtored to the ſaid demandants, and to anſwer as well to us, as to the parties of ſuch *Diſmes*, that ſuch writs from henceforth be not granted, and the proceſs hanging upon ſuch writs be annulled and repealed, and that the parties be diſmiſſed from the ſecular Judges of ſuch manner of pleas.

Saving to us our Right ſuch as we and our anceſtors have had and were wont to have of reaſon.

And by that appeareth, That before that Statute the Right of Tythes was determined in the Kings Temporall Court, but the Statute now hath altered the Law. And if a Parſon be ſued in the Spiritual Court for the fourth part of the Tythes, for which he purchaſe *Indicavit &c.* by which the Judges do ſurceaſe. If the Patron of the Parſon which ſueth in the Spiritual Court hath but an eſtate in tail in the Patronage, or for term of life, he ſhall not have a writ of *Droit des Diſmes* nor other remedy by the Common Law to try the Right of the Tythes for the feeblenes of eſtate: But if two be ſeized of an advowſon, and unto the heirs of one of them they ſhall join in a Writ of right of Advowſon for the advantage of him who hath the fee-ſimple.

And alſo a man ſhall not have a Writ of *Indicavit* before that the party hath libelled againſt him in the ſpiritual Court. And he ought to ſhew the copy of the Libel before the *Indicavit* be granted; and the *Indicavit* doth not lye after Judgement given in the Spiritual Court.

And a Writ of Right *of the Advowſon of Diſmes, and offerings of the fourth part of a Church*, lyeth as well as *of the Advowſon of the Diſmes of the fourth part of a Church onely.*

[31] And if a Parſon impariſonee or other be Vicar in the ſame Church, and one of them be impleaded of the fourth part of the Tythes of the Parſonage, and the other impleaded of the fourth part of the Tythes of the Vicarage, they ſhall have ſeveral writs of *Indicavit*, and their Patrons may have ſeveral writs of Right of Advowſon of the Tythes &c.

And it appeareth in 13 *H.* 6. by the opinion of *Fortefcue* that before the writ of *Indicavit* lay of Tythes ſued in the Spiritual Court, there was no writ of *Droit des Diſmes* ſued thereupon. But it ſeemeth againſt reaſon; for the writ of *Droit* of Tythes lay as well for the Patron, as the *Indicavit* lay for the Parſon.

And in 31 *E.* 1. that it appeareth that a man ſhall have a writ *de Droit of the moity of an Advowſon* where an Advowſon is partable betwixt two Coparceners, and one of them is diſturbed by a ſtranger.

But the writ of *Droit of the Advowſon of the moity of a Church* lay where two Coparceners do preſent two Parſons

to

to one Advowſon &c. As there are in ſome Churches two Parſons &c.

C And a writ of Right of Advowſon lyeth *of the Advowſon of a Vicarage, or Prebend or Chappel* and ſuch like as well
D *of the Advowſon of a Church.* And the King ſhall have ſuch writ as well as a common perſon. But a man ſhall not tender a demy-mark againſt the king to enquire of the ſeiſin alledged in the Kings Court, or declaration, as he ſhall in caſe if a common Parſon bring the writ. Neither ſhall a man have final Judgement againſt the king, although it be after the miſe join betwixt the King and the Tenant.

E And a man ſhall have a writ of Right of advowſon of a Chappel which is Donative, as well as he ſhall have if it were preſentable unto the Ordinary.

Aſſiſe de Darrein Preſentment.

THe form of the writ of Darrein preſentment for a Common parſon is ſuch.

The K. &c. to the Sheriff greeting. If H. *ſhall ſecure thee &c. then ſummon &c.* 12 *free and legal men of the venew of* B. *that they be before our Juſtices &c. ready by oath to acknowledge what advowſon in time of peace preſented the laſt perſon who dead is to the Church of* C. *or the laſt Vicar who dead is to the Vicarage of* N. *which is void, as is ſaid, and the advowſon of which the ſame* A. *faies to him belongeth, and in the mean time that Church let them view, and their names to be imbreviated cauſe, and ſummon* B. *who of that Advowſon him deforces and have there the ſummon and this writ, witneſs &c.*

Note that upon *Quis advocatus &c.* 20 E. 3. Darrein preſentm. 23 per Wil. by & 9 E. 2. *ibid.* 27. if the Aſſiſe ſhall be awarded for him: and therefore one cannot make title to a preſentment in time of war. 7 E 2. Darrein preſentment. 26 E. 3. 42. *ibid.* 4. ac.

finde Title for a ſtranger not named in the writ; a writ to the Biſhop

But for the King the writ is: *The King &c. to the Sheriff greeting, Summon by good ſummons* 12. *free &c.* And ſhall not ſay, *If the King ſhall ſecure thee &c.* Becauſe the King ſhall not find pledges to ſue an action, for he ſhall not be amerced &c.

And a man ſhall have aſſiſe of Darrein preſentment, although he nor his anceſtors do preſent to the laſt avoidance,

avoidance, as if the Tenant for life, or for years, or in dower or by the Curtesie, suffer an usurpation unto a Church &c. and dye, he in the Reversion who is heir unto the ancestur who last presented shall have an assise of Darrein presentment if he be disturbed. But if a man present and then grant the advowson unto another for life and he suffer one usurpation, or two, or three usurpations, now at the next avoidance he in the Reversion shall not have an assise of Darrein Presentment if he be disturbed to present. And that appeareth by the Statute of *West. 2. cap.* 5. That the remedy of the Statute is given for the heir of him who made the demise, who is in Reversion, and not for the Lessor himself.

20 E. 3. Darrein presentment 13. if the Assise find that tenant by the Curt. or tenant in dower was the last who presented by that the heir shall have a writ to the Bishop and yet he cannot make title by that presentment. Contr. in a *Quare Imped.* and Seton gives the reason, because he cannot convey by them. But if the heir do allege the last presentment in her self, and the Assise be to her by default and found *ut supra*, yet the heir shall recover, contr. if they be at issue upon that presentment.

16 E. 2. Darrein Presentm. 20. H

And if a man present unto an advowson, and afterwards the Parson doth resign, or is deposed, and the Patron present again and is disturbed, he shall have an assise of Darrein presentment, and the form of the Writ shall be, *What Advowson in the time of peace prosecuted the last person who is dead to the Church &c.* although that he resign, and be living.

20 E. 3. Darrein Presentm. 13.

And the form of the writ is to suppose that the defendant doth deforce him of the Advowson, and yet by his count he counteth that he or his ancestors last presented unto the advowson, by which he doth suppose that he is in possession of the advowson, and yet the same is good.

6 E. 3. 41. Darr. presentm. 4. 7 E. 3. ib. 2. I

If a man do present unto an advowson unto which he hath right, and afterwards the Incumbent dyeth, and a stranger usurpeth and presenteth unto this advowson in the time of war, and after the Incumbent dieth, now if he who hath right do present again, and be disturbed; he shall have an assise of Darrein presentment, and this presentment made in time of war by the stranger shall not grieve him.

6 E. 2. Dar. Presen. 16. 20 E. 3. ib. 13. for the Ordinary shall pretent in the right of him who hath right.

And so if a man present unto an advowson, and afterwards the Incumbent dieth, and another Ordinary doth present by Lapse another Incumbent, and after that Incumbent dyeth; now the Right Patron shall present, and if he be disturbed he shall have an assise of Darrein presentment notwithstanding the mean presentments.

And

And ſo if the Guardian do preſent in the Right of the heir, and the Incumbent dyeth, the heir ſhall preſent, and if he be diſturbed he ſhall have an Aſſiſe of Darrein preſentment, although the Guardian did preſent the mean and the laſt preſentment. But if a man preſent unto an Advowſon and after leaſe the ſame for tearm of years, and after the Church is void and the Tenant for years doth preſent &c. and then the Incumbent dyeth, and the Leſſor preſenteth and is diſturbed, it ſeemeth that he ſhall not have an Aſſiſe of Darrein preſentment, becauſe the Tenant for years did preſent in his own Right. But Tenant for years ſhall have Aſſiſe of Darrein preſentment if he have preſented before; and ſo ſhall the Guardian of the heir if he have preſented before.

Vid, 14 E. 3. Darrein preſent. 19 Berry ſaith that he hath ſeen the preſentment in the name of the heir 20 E. 3. ib. 12. Green ac. 5 H. 7. 16. ac. 30. E. 3. Holt cont. 14 H. 7. 12. per Fairfax.

If a man uſurp upon an Infant and preſent, which Infant hath the Advowſon by deſcent, and afterwards the Incumbent dyeth, the Infant ſhall preſent, and if he be diſturbed he ſhall have an Aſſiſe of Darrein Preſentment. But if the Infant purchaſe the Advowſon and preſent, and afterward the Church become void, and a ſtranger preſent and uſurp upon the Infant, and then the Incumbent dyeth, the Infant preſents and is diſturbed by a ſtranger, he ſhall not have a Darrein preſentment, but ſhall be put to his Writ of Right.

[32]

35 H. 6. 60 Mes Conv. 236 *Quare*

Yet all is one deſcent per 11 E. 3. aſſiſe 87.

If the husband and wife preſent unto an Advowſon in the Right of the wife which is appendant to a manor of the wives, and after the husband alien one acre parcel of the manor with the Advowſon in fee unto a ſtranger and dieth, and the ſtranger preſents, and alieneth the acre unto another in fee ſaving the Advowſon unto himſelf, and then the Church voideth the wife ſhal preſent, and if ſhe be diſturbed ſhe ſhall have an Aſſiſe of Darrein Preſentment, becauſe the advowſon was ſevered from the acre; But if the advowſon were appendant to the acre, then the wife ought to recover the acre before ſhe preſent to the advowſon.

17 E. 3. Darr. preſentm. 9 Shard ſhe hath no other remedy but a *Quare Im. pedit. Fol* ac.

A And aſſiſe of Darrein Preſentment doth not lye for one Coparcener againſt the other, as it appeareth *M.* 15 *E.* 3. and *M.* 20. *E.* 3.

20 E. 3. Darrein preſentm.

11 and 13. but they ſeem to make a difference, where the diſturbance is before the compoſition to preſent by turn and when after.

And

And if one defendant die in a Darrein presentment, the writ is good by the Survivor against the other. B

If a disturbor present unto an advowson, and the Patron bring an assise of Darrein presentment, and pendant the writ the Incumbent dyeth, if the disturber presenteth another Incumbent, and dyeth, Yet the Patron shall have an assise of Darrein presentment upon the first disturbance against the heir of the disturbor *per journeys accomptes*: and so if the disturbor present two or three times within the six moneths the very Patron shall have an assise of Darrein presentment upon the first disturbor. C

33 H. 6. 32. the Church never is Religious betwixt parceners, for if they cannot agree the Ordinary ought to admit the presentee of the eldest, but contrary of joint tenants.

This proviso is taken away by West. 2. 29. *And it was provided before our* L. *the King, the Archbishops,* D *Bishops, Earls, and Barons, that no Assise of last presentation hereafter shall be taken of Churches Prebend, nor of Prebends,* Hill. 19. H. 3.

Quare Impedit.

THe form of the Writ of *Quare Impedit* for the King in E the Right of his Crown is such.

The King &c. to the Sheriff of Linc. greeting. Command W. Archbishop and R. *that they permit us to present a fit person to the Church of* W. *which is void, and belongeth to our gift, and whereof the aforesaid* W. *Archbishop and* R. *us unjustly hinder, as is said, and unless &c. summon &c. the aforesaid Archbishop and* R. *that they be before us &c. or before our Justices of the Bench &c.*

Vid. Fitz. Na. Br. 25. where a man may have an Assise of Darrein presentment, there he may have a *Quare Impedit*, but not *è contra*. C. 5. part 102. In a *Quare Impedit* the writ *fuit ad Ecclesiam* and the Count *de advocatione domum parium.*

For the king may sue this writ, and every Writ in what F Court he will.

And if the king hath title to present unto an advowson by reason of the Lands and Temporalities in his hands of a Bishoprick, or Abbey, or Guardianship of any heir, then the writ is,

The King &c. to the Sheriff of London, Command W. *Archbishop that he permit us to present a fit person to the Church of* W.

W. which is void, and to our gift belongeth by reason of the Bishoprick of Canterbury lately vacant, and in our hand being, and whereof the same Archbishop us injustly hinders as is said &c. And if it be unto a Prebend then thus, To the Prebend of I. in the Church &c. which is void &c. by reason of the Bishoprick &c.

And if it be by reason of ward, then the writ shall be, which is void, and to us &c. by reason of the wardship of the Land, and heir of T. sometimes Earl of A. deceased, who held of us in chief, and in our hand being, and whereof the foresaid &c. us injustly &c.

And if it be by reason of wardship by occasion of another wardship, then the writ which is void, and to us, &c. by reason of the wardship of the land, and heir of I. T. in the hand of the L. E. lately K. our father, by reason of the custody of the land and heir of S. of C. sometime Earl of Glocester deceased, of whom the same I. his land held by knight service, in the hand of the same our father being, and whereof the same &c. us unjustly hindreth as is said.

And by the Register, the King shall joyn with another Parson in a *Quare Impedit*, and the form of the writ is such.

G *The K. &c. to the Sheriff, &c. Command* R. *of* C. *that justly &c. he permit us and* P. *of* T. *to present a fit person to the Church of* K. *which is void, and to us, by reason of the wardship of the land, and heir of* I. *who was the wife of* T. N. *who held of us in chief deceased, in our hand being, and to the donation of him* P. *of* T. *belongeth, and whereof the foresaid &c. us and the foresaid* P. *of* T. *injustly hindreth.*

But now the common opinion is, that the King shall have the whole presentment alone, and alone shall have the action, But me thinks that it stands with reason that the King and the other join; as in a popular action the party shall sue for the King and for himself, and the words of the writ are. *Qui tam pro Domino rege, quàm pro seipso sequitur, &c.* and that in an action of debt, &c. and by the same reason, the King may sue for himself and for the party. And the common experience is that a man shall hold lands in common with the King, and also Chattels: and by the same reason they may have the presentment, or advowson in common. 11 E. 3. Br. *Quare Impedit.* 73.

R And if a man be disturbed to present unto a Parsonage then the Writ shall be, *Command that he permit him to present*

sent, &c. to the Church, &c. for the word Church is always intended a Parsonage; and if it be a Vicarage, then the Writ is, *That he permit him to present to the Vicarage.* And if it be a Prebend; then *ad Prabendam*; and of a Chapel *ad Capellam*, and so he ought to name the Advowson as it is, &c. A

[33] A man shall not have a *Quare Impedit of an Advowson of* B *a moity, nor of the moity of an Advowson of a Church, &c.* And if one man hath the nomination unto an Advowson, and another hath the Presentation, if he name his Clerk 21 H. 6. 17 and he who hath the presentation present another Clerk, he which hath the Nomination shall have a *Quare Impedit*, and the writ shall be *quod permittat ipsum præsentare &c.* and in his Count he shall set forth the special matter, and it shall be good.

And so if a man hath a Chantry, which is a Donative C by Letters Patents, and he give the same unto a Clerk, who is disturbed by another, or another doth present to his Chantry or giveth the same by Letters Patents, he which 27 E. 3. 12 hath Right shall have a *Quare Impedit* of that Donative and the writ shall be, *That he permit him to present &c. to the Chantry &c.* and in the Count he shall set forth the special matter.

And if a Bishop be disturbed to present where he ought D to make Collection, the writ shall be *quod permittat ipsum præsentare &c.* and he shall Count upon the Collection.

And so if the King be disturbed to collate by his Letters E Patents unto his free Chappel, he shall have a *Quare Impedit*, and the writ shall be, *that he permit him to present to the Prebend*, in his free Chappel &c.

And a *Quare Impedit* lyeth of a Priory, or of an Abbey F and the Writ shall be *That he permit him to present to an Abbey or Priory &c.* See books of *Entries* 59.

And there is another form of writ, *That he permit him to* G *present to the Church of the house of* S. Martin *of Bristol which is void &c.* and so of an Hospital and the like.

And a man shall not have a *Quare Impedit* if he cannot al- H ledge a presentment in himself or in his ancestors, or in another person, from whom he claimeth the Advowson, and that in his Count, if it be not in speciall Cases, as if a man at this day erect a Church parochial by a Licence of the

the King, or other Chantry, which ſhall be preſentable &c. If he be diſturbed to preſent to the ſame, he ſhall have a *Quare Impedit* without alledging of preſentment in any perſon, and ſhall count upon the ſpecial matter. 21 E.4.2.3 16 H.7.8. Kible ac.

I And if a man doth recover an Advowſon againſt another in a Writ of Right, when the Church voideth, he ſhall preſent, and if he be diſturbed he ſhall have a *Quare Impedit*, and alledge the preſentment in him againſt whom he recovered without alledging any other preſentment. And a man ſhall have a *Quare Impedit* and alledge a preſentment by his Procter, and it ſhall be good without alledging a preſentment in himſelf. *quod vid.* 17 E. 3.

K And if an Abbey hath been Parſon *imparſonee* time out of minde, and afterwards the Abbey is diſturbed, he of whom the Advowſon is holden ſhall preſent, and if diſturbed ſhall have a *Quare Impedit* without alledging of any preſentment in the Count, but ſhall ſhew the ſpecial matter. C. 2. part. 47. b. ac.

L If Coparceners make partition to preſent by turns and ſo do, and afterwards the younger ſiſter dye her heir within age, and in ward to the King, and afterwards the Church void two or three times during the nonage of the heir, who is the Kings ward, the King ſhall preſent, and if he be diſturbed he ſhall have a *Quare Impedit* alone, as it appeareth *M.* 22 E.4. But ſaving the opinion of the book I conceive the law to be otherwiſe becauſe the Inheritance of the preſentment is ſeveral &c. And if two ſiſters be and have an Advowſon which becommeth void, the eldeſt ſiſter ſhall have the firſt preſentment and ſo the husband of the eldeſt ſiſter (if he be Tenant by the courteſie of the Advowſon) ſhall have the firſt preſentment, And the Tenant in dower ſhall have but the third preſentment &c. 21 E.3. Br. *Quare Impedit*, 73.

N If the king have an Advowſon in fee, which voids, and during the avoidance the king granteth the *Advowſon* in fee, the King ſhall not preſent to this avoidance, but if the King have an Advowſon by reaſon of the temporalities of a Biſhop, and during the avoidance the King reſtore the Biſhop the temporalities, yet he ſhall preſent unto the Advowſon, and not the Biſhop for this avoidance. 16 H.7. 8i

O If the heir ſue his Livery and hath it, yet the King ſhall preſent unto an Advowſon which became void during the time that the Advowſon and Landwere in the kings hands.

P If

If a man be ſeiſed of an Advowſon in Groſs or in fee appendant unto a manor, and the Advowſon void, and he dyeth, his Executor ſhall preſent and not the heir, becauſe it was a Chattell veſted and ſevered from the Manor.

And if a man be diſſeiſed of a manor unto which an Advowſon is appendant, and the Advowſon become void, the diſſeiſee may preſent and have a *Quare Impedit*, although he hath not entred into the mannor. But if the Biſhop dy, and the Advowſon happen void before his death the King ſhall preſent unto the ſame by reaſon of the Temporalities and not the Biſhops Executors. Q R

24 H. 8. Di. 4. C. 3. p. 3. 30 E. 3. 26. ac Vid. after 34 K.

So if a man have a manor unto which an Advowſon is appendant in fee, and the Church void in the fathers time and he dy, and his heir in ward to the King, the King ſhall have the preſentment. S

2 H. 4. 19. 40 E. 3. 14. after 34 K. 143 E.

Guardian in Socage of a manor unto which an Advowſon is appendant, and the Church void, the heir ſhal preſent, and not the Guardian, becauſe he cannot account for the ſame. T

If the King grant unto an Abbot and his anceſtors that the Monks ſhall have the Temporalities during the vacation now if the advowſon happen void, during the vacation, the Monks ſhall preſent to the ſame. *M.* 39 *E.* 3. V

The preſentation to the Vicarage doth of common right appertain unto the Parſon, but he may grant the ſame to another by aſſent of the Patron and Ordinary. A

The heir in tail ſhall not have a preſentment fallen in the life of the Tenant in tail, but the Executor of Tenant in tail; ſo the Termer ſhall have the preſentment which happeneth during the Term although that he hath not preſented during the term to the Advowſon, &c. [34] B

The King may repeal his nomination or preſentation, but a Common Parſon cannot ſo do. And the King ſhall have a writ unto the Biſhop to induct one into a Prebend which the King hath given unto him; and to give him a ſeat in the Quire, and a place in the Chapter houſe. C D

And a man ſhall have a *Quare Impedit* of an hermitage, and a writ to put him into Corporall poſſeſſion: E

If the king recover by *Quare Impedit*, and afterwards ratifie the eſtate of the Incumbent; yet at the next avoidance the king ſhall preſent becauſe his *Recordare* and judgement for him was not executed, *T.* 9 *E.* 3. In a free Chapel F

of

of the King, where the Deane ought to give the Prebends, if he doe not collate within six months unto them, then the King shall present by lapie to them as ordinary.

G If an Advowson be void be six months, at which time the King is seised of the Temporalities of the Bishoprick, the King shall present to this Advowson, as the Bishop should do, and the King shall have a *Quare impedit* of the sub-Deaconry of *York* which voided, when the Temporalties of the Arch-Bishoprick were in the Kings hands. And the writ shall be, *Quod permittat cum præsentare*; and yet the King shall give this sub-deaconry by his letters Patents.

H Where partition is made betwixt coparceners by licence of the King of an Advowson in a Court of Record, as in the common Pleas, and afterwards the coparcener who hath the next turn dieth, her heir within age and in ward to the King, and the Church void, the King shall have a *scire facias* against the other coparcener, &c. upon that partition, and yet he was a stranger to the partition. 31 E. 3.

I If two coparceners make partition to present by turnes, although that one of the coparceners do afterwards usurp upon the other coparcener, and presents in her turne, that presentment shall not put her out of possession, but shee shall have her turne when it fals again, and shall have a *Quare impedit*, or a *Scire facias* upon the composition, if it be upon Record, if shee be disturbed for to present, &c.

K If a Bishop make a collation, and before Induction or Installation, dieth, and the King seiseth the Temporalties, he shall have this presentment, because that the Church is not full against the King, untill the Parson or Prebend be installed or inducted. 50 E. 3. 26.

L If a Parson hath a Parsonage, and afterward doth take another Benefice without dispensation; now the first Benefice is void, and the Patron thereof may present, for this avoidance is called Cession.

M If in the time of vacation of an Abby or Priory, a Church happen void, which is of the Patronage of the Abbot or Prior, and a stranger doth usurp and present thereunto, this usurpation shall not prejudice the successor, but at the next avoidance of the said Church he may present, and have

a *Quare impedit:* But otherwise is it if an usurpation shall be had in the time of his predecessor for that shall put the successor out of possession if the six months be past.

If a Vicarage happen void, and before the Parson N present, he is made a Bishop, &c. yet he shall present unto this Vicarage, because it was a chattell vested in him.

The Founder of a Priory shall have a *Quare impedit* O against the Subprior and the Covent, if they disturb him to present an Advowson which belongeth to the house, if it were void during the vacation, where the Founder ought to have the Temporalties during the vacation. *P 9 E. 3.*

If a man traverse an office found of a manor, unto which P an Advowson is appendant, and upon the traverse the King leaseth the manor unto him who tendred the traverse, without mentioning the Advowson, and afterwards the Church void, he who tendred the traverse shall have the presentment if the traverse be found for him.

If a feme be assigned the third part of a manor unto which Q an Advowson is appendant in Dower, shee shall have the third presentment.

If the Patron be out-lawed in Trespass, and the R Church void, The King shall present, because of the outlawrie.

14. H. 6. 24 Nevrō feme is disturbed and taketh husband, the Church void the husband presents, the same shall vest the right in the wife.

If a feme purchase an Advowson, and take a husband, S and the Church void, and a stranger doth present, and the husband suffer an usurpation, &c. by this usurpation the wife shall be out of possession after the six months past; and shee shall be put to her writ of right of Advowson, if she have presented before; and if she have not presented, she is without recovery: But otherwise is it if the feme shall have an Advowson by descent, or by course of inheritance.

If an infant or a feme Covert do not present within six T months, the Bishop may present for lapse.

One Joyntenant or Tenant in common, shal not have V a *Quare impedit* for the Advowson which they have in common, or in Joynture, if one of them present solely against his Companion. But if two coparceners cannot agree in the presentment, the eldest Sister shall have the first presentment, and he who hath her estate shal have the first

preſentment, and if he be diſturbed by the other coparcener, ſhe or he who hath her eſtate, ſhall have a *Quare Impedit* againſt the other Siſter, and the coparceners and thoſe who have their eſtates, ſhall preſent, as coparceners ought to do, *ſcil.* the eldeſt firſt, and then the middlemoſt, and then third, and then the fourth, and ſo as they ſhall be of age, &c.

35. H 8 Dy. 55. Advowſo deſcends to two coparceners, one of full age, and the other within age, the Gardien marrieth the eldeſt, the Church void, he preſents in both their names, the youngeſt cometh of age. Some are of opinion that if they do not agree, that the eldeſt ſhall preſent, and it ſhall be her turn; Others contrary, *Quere.*

I If an Infant have a Manor unto which an Advowſon is appendant, and ſuffereth an uſurpation when the Church becometh void, and afterward at full age grant the manor in fee, and afterwards the Church become void, the Infant ſhall preſent, and not the Feoffee of the manor, for the Advowſon was ſevered by the uſurpation; and yet the Infant may preſent to the ſame.

A If the Kings Tenant hath title to preſent unto an Advowſon which is void, and the ſix months paſſe, and afterwards the Kings Tenant dieth before the Biſhop preſent for lapſe, his heir within age, and in ward to the King; the Biſhop ſhall not preſent for lapſe, but the King ſhall have this preſentment, by reaſon of the wardſhip. *P.* 18. E. 3. [35]

B If tenant in taile of a manor, unto which an Advowſon is appendant, diſcontinue the manor in fee with the Advowſon, and after the diſcontinuer granteth the Advowſon unto another in fee, and afterwards doth reinfeoffe the Tenant in taile of the manor, who dieth ſeiſed of the manor; his heir ſhall preſent unto the Advowſon when it ſhall happen void; and if he be diſturbed, he ſhall have a *Quare impedit*, becauſe he is remitted unto the Manor, and hath not remedy to come to the Advowſon.

C The defendant in a *Quare impedit*, may ſue a *Quare impedit* againſt the Plaintiffe, *if* his Clerk be not admitted nor inſtituted And if the Plaintiffs clerk be inſtituted and inducted pendant the Writ, it ſhall not abate the Plaintiffs Writ; but in that caſe if the defendant recover againſt the Plaintiffe, he ſhall avoid the plaintiffs clerk, and ſo if the defendants clerk be admitted pendant the writ againſt him, if the Plaintiff recover, he ſhall avoid the Defendants clerke:

But if the clark of the Defendant were admitted and inſtituted at the time of the purchaſe of the Writ, and the Plaintiff Purchaſe the Writ onely againſt the Patron, not naming the Incumbent; although the Plaintiff recover, he ſhall not avoid the Defendants clarke, becauſe he might have named him in the *Quare Impedit.*

If a ſtranger do preſent unto an Abby or Priory which is D eligible by the convent, and his clark be inſtituted and inducted. *Quære*, how this wrong may be after redreſſed and reformed.

If a man hath a chappel or chauntry which is donative E by Letters Patents, and he once preſent unto the Ordinary his clark to the chauntry, he ſhall never after collate, but ought to preſent unto the Biſhop; and if he do not preſent within ſix months, the Ordinary ſhall have advantage of the lapſe.

20 Eliz. 11. Hares caſe, he ought to be inducted.

A preſentment made by a ſtranger unto an Advowſon F which is appropriated unto an Abby, be the preſentment in the time of vacation, or in the time of the Abbot, is void, although that the clark be inſtituted and inducted; but if the Abbot himſelf preſent unto the Biſhop his clark to an Advowſon which is appropriate to his houſe, this preſentment doth diſappropriate the Advowſon, and make it preſentable after; and if he do not preſent within ſix moneths after every Avoydance, the Biſhop ſhall preſent for lapſe. The G Biſhop ought to preſent his clark for whom it is firſt found by a *Juge Patronatus.*

1 H. 7. 9. 12 & 13 H. 8. Dy. 293.

The Biſhop ſhall not have the advantage to preſent by H lapſe, where the Church doth become void by reſignation or deprivation, without giving notice thereof to the Patron.

Dr. & Stud. 117. 1 El. Dyer 293.

Where the Biſhop doth refuſe the clark of the Patron for I non ability, or for crime, he ought for to give notice thereof to the Patron, otherwiſe he ſhall not preſent for lapſe; but after the ſix moneths paſt, the Patron ſhall have a Writ to the Biſhop, if the Church do remain void, and the Biſhop hath not collated thereunto.

The Chancellor of *England* ſhall preſent to all the K Kings churches which are under the ſumme of twenty marks by the yeer, which are in the Kings gift, and in the right of the crown: But if the King hath them by any other

other Title, then the Chancellor ſhall not preſent unto them.

L The death of one plaintiffe, nor the nonſuit of one plaintiffe ſhall not abate the writ, but he ſhall be ſeevered. C. 10. part. 134.

M Where an infant hath an advowſon by deſcent, and the church voideth, and he who hath title paramount doth uſurpe, and preſent unto the ſame church, and the ſix moneths do paſſe; he is remitted by this uſurpation, and the infant out of poſſeſſion, and without remedy by that uſurpation. 38. E. 3. 36.

N If a man hath an advowſon, and the church doth become void, and two ſtrangers do ſeverally preſent their clarks to the Biſhop to that advowſon; the patron ſhall have divers *Quare impedits* againſt them if he will, and ſhall have ſeverall judgements, and ſhall recover ſeverall damages for their ſeverall preſentments and wrongs done.

O If a man maketh another his proctor, to preſent unto all his advowſons, and to do ſeverall things for him; if the proctor preſent as proctor unto him, unto an advowſon unto which he hath right to preſent in his own right, that preſentment ſhall put him out of poſſeſſion of the advowſon, and ſhall give the poſſeſſion to the other. 17. E. 3. 60.

P In a *Quare impedit* for the King, although the defendant hath a writ unto the biſhop againſt the King, the King may have a new *Quare impedit* againſt him of the ſame avoydance, and make other title.

Q If prior and covent ought to chooſe the abbot, and name him to the patron, and he to preſent him to the biſhop, and they chooſe one for abbot, and name him to the patron, and the patron doth preſent another to the biſhop, they may ſue in the ſpirituall court for remedy, as it is ſaid: *H.* 11. *E.* 3. *tamen quære*; for it ſeemeth, they are enabled to ſue at the common law, as well as they are enabled to chooſe and name the abbot. As the prior of *Weſtminſter* and the covent, have power to ſue their abbot for an advowſon, *M.* 20. *E.* 3. 43 E. 3. 28. per Forteſcue.

If the diſturber preſent two or three times within the ſix moneths, yet a *quare impedit* lieth againſt the diſturber upon the firſt preſentment; if he purchaſe the writ within the ſix moneths.

[36] Where a man doth recover in a writ of right of Advowſon, A hee ſhall preſent at the next avoidance, and ſhall have a
16. H. 7. 8. Per Keble. *Quare impedit*, without alledging any preſentment in himſelfe, or his Anceſtors, but ſhall declare upon the record, or may have a *ſcire facias* upon the recoverie. And ſo may his heir have a *ſcire facias* upon that recoverie, againſt the heir of the other party, at the next avoydance after the recoverie; but not after, at it ſeemeth.

If a man recover in a *Quare impedit*, he ſhall have a *ſcire* B *facias* againſt the Patron and the Incumbent who made default, if he will ſue execution of this recoverie.

If coparceners make partition in the Chancery, or in the C common Pleas to preſent by turnes, and afterwards a ſtranger doth uſurp in their ſeverall turns, yet after when their turnes come, every of them may have a *Scire facias* upon this partition againſt the ſtranger when his turn cometh, to ſhew wherefore he ſhould not preſent, notwithſtanding the uſurpation aforeſaid. But otherwiſe it ſeemeth
18. H. 7. 8. &c. it is, if the partition be of record, then they ſhall be put to their writ of Right, by reaſon of this uſurpation.

If coparceners make compoſition to preſent by turns, and D a ſtranger doth uſurp, and preſenteth in the turn of one of them, yet if they will, they may joyn in a *Quare impedit* againſt the ſtranger notwithſtanding that compoſition. And after compoſition to preſent by turns, if they do preſent in common, they may well ſo do. But it ſeemeth by this, that the compoſition is waved; for if coparceners (where one is within age) make compoſition to preſent by turnes, and at full age they preſent contrary to this partition, theſe preſentments ſhall avoid the partition made before.

If the eldeſt ſon by the firſt *Venter* preſent, and dyeth E without heir, and afterwards the Church becomes void, the younger by the ſecond *Venter* ſhall not preſent, nor have this Advowſon. But *Devon* ſaith, If a man hath two daughters by divers *Venters*, and they enter and make partition to preſent by turnes, and one dieth without heir, the other Siſter ſhall be her heir, *quod fuit conceſſum*. But after the partition, if one Siſter hath preſented, and afterward dyeth without heir, it ſeemeth her Siſter of the halfe blood ſhall not be heir unto her.

If

F If a man be diſſeiſed of a manor, unto which an Advowſon is appendant, and the Diſſeiſor ſuffer an uſurpation by a ſtranger unto the Advowſon, and afterwards the Diſſeiſor doth re-enter into the manor, he ſhall preſent unto the Advowſon when it doth become void, nothwitſtanding ſuch uſurpation.

Spoliation.

G THere is a manner of ſuit called *Spoliation*, for the fruits of a Church, or for the Church it ſelfe, which is to be ſued in the Spirituall Court, and not in the Temporall Court, and therefore there is no Writ thereof in the Regiſter. But it is good to be knowne what perſon ſhall have that ſuit, and againſt what perſon it will lie, and for what thing he ſhall ſue, and when he ſhall ſue, and in what Court.

H *Spoliation* properly lieth for one Incumbent againſt another Incumbent where the right of the patronage doth not come in debate: As if a Parſon being created Biſhop, and hath a diſpenſation to hold his Rectory, and afterwards the Patron doth preſent another Incumbent who is inſtitute and inducted: Now the Biſhop ſhall have a *Spoliation* againſt that Incumbent, in the Spirituall Court, becauſe he claimeth by one Patron, and the right of the Patronage doth not come in debate. 2. H. 6. 20. Forteſcue. 26. H. 8. 3.

And ſo if a Parſon do accept of another benefice, for which the Patron preſents another clerk, who is inſtitute and inducted, now one of them may ſue a *Spoliation* againſt the other, and then it ſhall come in debate whether he hath plurality or not. But if a Patron doe preſent a clerk unto an Advowſon, who is inſtituted and inducted, and afterwards another man doth preſent another Clerk to the ſame Advowſon, who is alſo inſtituted and inducted, there one of them ſhal not have a *Spoliation* againſt the other if he diſturb him of the Church, or to take the fruits thereof, becauſe the right of the Patronage doth come in debate in the ſpirituall court, which of the Patrons hath right for to preſent; and therefore in that caſe, if one of them ſue a *Spoliation* againſt the other he ſhall have a prohibiti n un- See after 51 1.

to the Spirituall court, and no consultation shall be granted for the cause before said.

And if one Clerk without any presentation, institution or induction, doe cast out another Parson out of his Rectory, and taketh the profits thereof, the Parson shall not have a *Spoliation* against him, but an action of Trespass, or an assise of *novel Disseisin*; for *Spoliation* doth not lie, if not against him who cometh to the possession of a benefice, or unto the fruits thereof by the course of the Spirituall Law, *scil.* by institution, &c. so that he have colour to have it, and to be Parson by the Spirituall Law. I

38 *H.* 6. 19. Markam. 26. H. 8. 1. 22 H. 6. 27.

So if a Prebend void, and the Bishop collate thereunto, and before induction the Bishop die, and the Temporalties come unto the King, and afterwards hee is inducted, and afterwards the King giveth the same by his letters patents unto another Clerk, who is instituted and inducted, the first Clerk shall have a *Spoliation* in the Spirituall Court against the Presentee of the King, because the King ought to have removed him by *quare impedit*, and not to have collated as he did. And there the Patronage doth come in debate. K

[37] If an Abbot have a manor unto which an Advowson is appendant in fee, and he doth appropriate the Advowson to him and his successors, and afterwards leaseth the Manor for one thousand years and also the Advowson, and the Lessee makes an union of the Parsonage and the Vicarage, and presents the Vicar unto the ordinary as Parson, &c. by reason whereof the Abbot sueth a *Spoliation* against the Vicar, and the Vicar sueth a Prohibition, the Abbot shall not have a consultation upon the matter shewed. By which it appeareth, that a *Spoliation* doth not lie for the Abbot in this case; for that the right of the patronage doth come in debate. A

44 E. 3. 33.

And so if an Abbot bee Parson imparsonee, and a stranger present his clerk to that Advowson, who is instituted and inducted, the Abbot shall not have a *Spoliation* against the Clerk, but an action of Trespass or assise, if he bee ousted; because the right of the Parsonage is to be tryed. B

38 E. 3. 19, 20.

And if a Clerk obtain a Benefice by provision, for which cause the King is to have the presentment for that time, be- C

cause

cauſe the very patron did not preſent within the time limited him by the Statute of 25. *E.*3. and the King preſents to the Church his clerk to the ordinary, who is inſtitute, and before induction takes the profits; he who is in by proviſion, ſhall have a *Spoliation* againſt him, becauſe he doth not come to the poſſeſſion of the churchby the Spirituall Law, but as an Intrudor and Treſpaſſor. But if the preſentee of the King were inducted, then there is no remedy for him who hath the benefice by proviſion.

D A clerk had a collation by the King unto a chappell, and was put into poſſeſſion by the Sheriffe; and afterwards the clerk was ouſted by a Prior, &c. in that caſe hee ſhall not have a *Spoliation*, but an Aſſiſe or Treſpaſs, &c.

E But it appeareth by the Regiſter, that one Parſon ſhall have a *Spoliation* againſt another Parſon which have diverſe patrons, &c. and if he be ſpoiled of any titles or profits appertaining to his Church, which do not amount to the fourth part of the value of the church, as before is ſaid. But if they doe amount unto the fourth part of the church; then one Parſon ſhall not have a *Spoliation* againſt another Parſon, if they claim not of one Patronage, ſo that the title of the patronage doth not come in debate; and then he ſhall have a *Spoliation*, and if the other ſue a Prohibition, &c. hee ſhall have a conſultation.

Ne admittas.

F THis Writ of *Ne admittas* lieth for the Plaintiff in a *quare impedit*, and the ſame is where one hath an action depending in the common Pleas of Darrein preſentment, or of a *quare impedit*, and he ſuppoſeth that the Biſhop will admit the clerk of the Defendant pendant the plea betwixt them, then he may ſue this Writ directed to the Biſhop; and this Writ ought to bee ſued within the ſix months after the Avoydance, for after the ſix months hee ſhall not have this Writ, becauſe that then

then the Biſhop may preſent for lapſe; and therefore it is in vain then for to ſue this writ, becauſe that the Title to preſent is then devolved unto the Biſhop: but the King may ſue this Writ after the ſix months, where he hath a *Quare impedit* depending, or Aſſiſe *de* Darrein preſentment, becauſe that *nullum tempus occurrit Regi.*

But there is a rule in the Regiſter thus, *Notandum eſt, quando Rex preſentat ut in jure Coronæ, tunc incurrit ei tempus.* But that is not law at this day.

And the writ of *Ne admittas* for the King is ſuch: G

The King to the venerable Father in Chriſt W. *by the ſame grace, Biſhop of* Wincheſter, *greeting. We forbid you, that you admit not a Parſon to the Church of* I. *which is void, as is ſaid, and of the Advowſon of which contention is moved in our Court, betwixt us and* A. Or thus, *betwixt* A. *and* B. *untill it ſhall be diſcuſſed in the ſame Court, whether to us, or the ſaid* A. Or thus, *in the ſame Court, to which of them belongeth the Advowſon of the ſame Church:* Or thus, *betwixt us, by reaſon of the Abbey of* S. *vacant, and in our hand being, and* H. *the Biſhop of* Lincoln, *untill it ſhall be diſcuſſed in the ſame Court, whether to us by reaſon of the vacancy aforeſaid, or to the foreſaid Biſhop, belongeth the Advowſon of the ſame Church.*

And it ſeemeth, that the defendant may ſue this Writ as well as the plaintiffe, if the defendant do ſuppoſe that the Biſhop will admit the Clark of the plaintiffe pendant the Writ: And this Writ of *Ne admittas* doth not lie, if the plea be not depending in the Kings Court by *Quare impedit* or Aſſiſe of Darrein Preſentment. And therefore there is a Writ in the Regiſter directed unto the chief Juſtice of the common Pleas, to certifie the King in the Chancery, if there be any pleas depending before him and his companions by writ, betwixt ſuch and ſuch perſons, &c. And therefore it ſeemeth, the writ of *Ne admittas* ſhall not be granted, before the King be certified in the Chancery that ſuch pleas of *Quare impedit*, or Darrein preſentment be there depending in the common Pleas. But yet the writ of *Ne admittas* may be granted out of the Chancery, directed unto the Biſhop, that he do not admit, &c. before that the King be certified in the Chancery, that ſuch plea of *Quare impedit* or Darrein preſentment is depending in H

the

the common Pleas. And if the truth be, that there be no plea depending in the common Pleas, then the partie grieved may require the chief Juſtice to certifie the King in his Chancery, that no ſuch plea is depending there, and thereupon the party grieved ſhall have ſuch writ.

The King to the venerable Father in Chriſt, &c. Though we by our Writ forbad you that you ſhould not admit a Parſon to the Church of I. (*as in the writ of* Ne admittas) *yet* [38] *becauſe by certificate of our beloved, &c.* I. *of* S. *it is made known to us, that no plea hangeth in our Court foreſaid, before him and his Companions or Juſtices of the Bench, betwixt us and the ſaid* W. *of the Advowſon aforeſaid, You we command, that that which to your duty in this part you know to belong, you freely exerciſe, our prohibition foreſaid notwithſtanding. Witneſſe, &c.*

A And when the Biſhop himſelfe is partie and diſturber, Then the form of the writ of *Ne admittas* is as aforeſaid; *We forbid that you admit not.* Yet the forme of the writ uſed to be, *We forbid you, that you conſer not a Clerk to the Church, &c. which is void, &c.*

Breve Epiſcopo ad admittendum Clericum.

B IF a man do recover his preſentation in the common Pleas againſt the Biſhop, then he may have a writ to the ſame Biſhop to admit his clerk; or unto the Metropolitan: and the writ ſhall be ſuch. 7. H. 1. 32. 8 H. 4. 22. A writ ſhall iſſue to the Metropolitan, if the Biſh. be party. *Quere*, for the Biſh. did diſclaim as Patron in 8 H 4

The King to the venerable Father in Chriſt, &c. Whereas the Prior of I. *&c in our Court recovered againſt you his preſentation to the Vicarage of* W. *we command you, that at the preſentation of him the Prior, a fit perſon you admit, &c.*

C And if a man recover againſt another then the Biſhop, then the writ which ſhall be made to the Biſhop, ſhall be thus:

The King to the venerable Father, &c Whereas the Prior of I. *&c. in our Court recovered againſt* J. P *&c. we command you, that notwithſtanding the reclaim of* J. P. *to the preſentation of the foreſaid Prior, &c. a fit perſon you admit, &c.* And upon In a *Quare impedit*, the defendant diſclaims there, the

plaintiff ſhal have a writ to the Biſh. *contr.*

upon that he ſhall have an *Alias*, and a *Pluries*, if the Biſhop do not execute the writ, and an Attachment againſt the Biſhop, if need be.

in a *Diſclaimer*, in a VVrit of right of Advowſon, 6 E. 3. 7. *Error* 78. The reaſon is, becauſe he cannot remove his Clerk after the ſix months paſt.

But if the King doe recover in the common Pleas, D any Prebendary, or Subdeanry, or Dignitie againſt the Biſhop, and giveth the ſame by his Letters Patents unto another clerk, the clerk ſhall ſhew the Letters Patents in the common Pleas, and thereupon ſhall have a writ unto the biſhop to admit him, and to induct him. And if the clerke die before hee be admitted and inducted, and the King giveth the ſame by other Letters patents unto another clerk, that clerk ſhall have a writ out of the Chancery, directed unto the Juſtices of the common Pleas, reciting the Recoverie, and how that the other clerk dyed before he was admitted, and how that he hath granted the ſame to this clerk by his Letters patents, commanding the Juſtices, that they ſend another writ to the biſhop, that they admit this clerk, notwithſtanding the Kings collation before made unto the other clerk.

31 *H.* 4. 71. *Hawk.* & *Hil.* 21 E. 3. 4. In a *quare impedit* betwixt two ſtrangers, if there E doth appear to the Court a title for the King, they ſhall award a writ unto the biſhop for the King.

If a man do recover an Advowſon, and the ſix months F paſs, yet if the Church be void, the patron may pray a writ unto the biſhop, and ſhall have it; and if the Church be void when the writ cometh to the biſhop, the biſhop is bound

14 H. 4. 11. *Hawk ſed.* 31 H. 6. 15. *Contr.* where there is fault in the Count. to admit his clerk. And in reaſon, the ſame law is, if the patron after the ſix months preſent unto the biſhop; if the Church be then void, the biſhop is bound to admit his clerk.

And a *quare impedit* ſhall be ſued againſt a ſub-Prior G &c. for diſturbance of the patron. *Trinit.* 31. E. 1.

Where the writ abateth for form or falſe Latine, the de- H fendant ſhall not have a writ to the biſhop. If the patron who

7 H. 6. 15. per Curiam. & contrà, if the Patron had appeared, and the Incumbent made default in 7 H. 6. 37. 14 H. 4. 16. upon pleas of the Incumbent, a *Writ* awarded to the Biſhop. is defendant make default at the diſtreſs, and the Incumbent abate the writ by plea, a writ unto the biſhop ſhall not be awarded for the patron, becauſe he made default.

In

I In a *quare impedit* againſt the biſhop and others, all made default but the biſhop, and the plaintiff had not a writ unto the biſhop againſt the others, untill he had counted againſt the biſhop. 10 H. 6. 4.

K If the plaintiff be nonſuit, the defendant ſhall not have a writ unto the biſhop, before he hath made title to the Advowſon. 33 H. 6. 1. 22 H. 6. 44. 1 H. 7. 13. 31 H. 6. 14.

38 H. 614. 34 H. 6. 44. 11 H. 6. 8. Note: For there the writ was brought by two coparceners againſt the third.

L Where the defendant claimeth the Advowſon as Parſon imparſonee, although it be found for the defendant, he ſhall not have a writ to the biſhop.

M Where the writ abateth for *miſnoſm'*, or for inſufficiency, the defendant ſhall not have a writ to the Biſhop. *Writ. 9 H. 6. 16. per Curiam*: the plaintiff ſhall have a writ to the Biſhop upon inſufficient plea.

N If the defendant do not appear at the diſtreſſe returned againſt him, the plaintiff ſhall have a writ to the biſhop, without making title. 21 H. 6. 36. Ard. 33 H. 6. 1.

O If the Sheriff return upon a *Quare Impedit*, *quod quarens non invenit pleg'*, then the plaintiff may finde pledges in the common Pleas, and ſhall have a new *Quare impedit* in the common Pleas: And if the Sheriff return upon that writ *tarde*, and the defendant appear, and the plaintiff be called and appeareth not, the defendant ſhall not have a writ to the biſhop, becauſe that no writ is ſerved againſt the defendant.

P Where the plaintiff recordeth by verdict in a *Quare impedit*, and it is found by the ſame verdict that the ſix months are paſt, and that the Metropolitan hath preſented, whereas the Ordinary ought to have preſented, &c. and that the year is now paſt, &c. yet the plaintiff ſhall have a writ to the biſhop.

Q If a man recover againſt a biſhop, he may have a writ to the ſame biſhop, or unto his Vicar general, if he be out of
R the Realm, or unto the Metropolitan. A man ſued divers *Quare impedits* againſt one biſhop, and he was nonſuit in all but one writ; the defendant had not a writ to the biſhop untill that writ was determined. 7 H. 4. 37.

S In a *Quare impedit*, the defendant pleaded to iſſue, and after made default, and a writ was awarded unto the biſhop for the plaintiff. 2 H. 4. 1.

T At the *Diſtringas* returned againſt the defendant, he comes

comes, and hath day by the prayer of the parties, and afterwards makes default, the plaintiffs shall not have a writ to the Bishop, but a new *Distringas*.

[39]

In a *Quare impedit*, the defendant maketh title for himself and others, and afterwards the plaintiff is *nonsuis*, A writ to the Bishop shall be awarded for the defendant onely, and not for the others. A

14. H. 7. 19. & 7. H. 6. 15. At the distresse returned against two, one appeareth, and the other maketh default, the plaintiff shall have a writ to the Bishop, against him who made default; and yet it may be, that the other defendant may bar the plaintiffe; and it is so used at this day: but the contrary was adjudged, *H.* 7. *E.* 3. for the cause before said. B

In a Darrein presentment betwixt two strangers, the Assise found a title for another stranger who was not partie to the writ, he shall have a writ awarded to the Bishop for him, although he were not party to the writ, because that the writ is, *Quis advocatus, ult. præsentaverit, &c.* C

Where a man hath a *Quare impedit* against one, and the defendans hath a Darrein presentment against the plaintiffe, and recovereth in the Darrein presentment, and the plaintiff is nonsuit in the *Quare impedit*, the defendant shall have two Judgments against the plaintiffe, to have a writ unto the Bishop in both actions; and two writs shall be awarded to enquire of the damages, but he shall not render double damages for one disturbance. D

When a man sueth a *Quare impedit* against another, and after, pendant the suit, he sueth *Ne admittas* to the Bishop, &c. and afterwards they agree to present in common by turns to that Advowson, then he shall have a speciall writ out of the Chancery unto the Bishop, to admit him who ought by the accord and composition to present at the first turn to that Avoydance. But first the King ought to send a *Certiorari* unto the Justices of the common Pleas, to certifie in the Chancery of the accord there; and upon that certificate, the King shall send his writ unto the Bishop, to admit his clerk, who by the Accord ought to have the first presentment and turn. And the form of the writ in the Register is such. E

The King to the Venerable, &c. Whereas lately we forbade you by our Writ not to Admit a Parson, &c. of the same third F

part

part of the Advowſon, and after at the proſecution of them, E. and M. to us ſuggeſting, betwixt them to have been agreed under this forme, That the foreſaid E. this time ſhould preſent his Clerk to the ſaid third part, and the foreſaid M. in the vacancy next following his Clerk ſhould preſent, as by certain Writings indented betwixt them made, and with their ſeals ſigned, and before us in our Chancery ſhown, more fully it appeareth; and they being to requeſt of you with inſtance, that the Clerk of him E. this time to the third part you would admit, according to the forme of the concord aforeſaid, you notwithſtanding affirming your hands, by pretence of our prohibition to be bound, the Clerk of him E. to admit have refuſed, and they ſupplicate to us, that we the collation of the third part to you by lapſe of time, which is nigh and imminent, as is ſaid, this turn may not be devolved, would by a fit appoſition of remedy in this part cauſe to be provided, we commanded our beloved and truſty R. of N. that he the acknowledgements which the foreſayd E. and M. before him make will, whether, viz. they upon the right of preſenting to the third, agreed be in forme foreſaid, and if the foreſaid M. will that the Clerk by him E. to the third part preſented, this turn ſhould be admitted, to the ſame hee would receive; and if thoſe writings were the deeds of them E. and M. and us thereupon in our Chancery, under his ſeal diſtinctly, and openly ſhould aſcertain: and becauſe the foreſaid R. us at our command hath certified, that it is agreed betwixt the foreſaid E. and M. that the foreſaid E. this inſtant vacancy ſhall preſent his Clerk to the ſame third part; and the foreſaid M. in the next vacancy following, and ſo the foreſaid E. and M. and their heirs to the third part alternately for ever ſhall preſent, and that to that agreement formerly to be obſerved, writings aforeſaid betwixt the two parties foreſaid are made: You we command, that a fit perſon to the foreſaid third part, at the preſentation of the foreſaid E. this turn ye admit, and further ye do what belongeth to your office in this part, our prohibition notwithſtanding. Witneſſe, &c.

G By this Writ it ſeemeth a man ſhall have a *Quare impedit quod permittat ipſum preſentare ad tertiam partem Eccleſiæ*; and it ſeemeth to ſtand with reaſon; for a conſolidation may be made of three Advowſons, and every Patron to preſent by turn, and then every one hath right but to a third part.

Prohibition

Prohibition and Inhibition.

THere are diverſe manners of Prohibitions and Inhibitions, and they may be directed as well unto the Temporal Court as unto the Spirituall court. And one Writ in the Regiſter is, where a man ſueth a *Præcipe In capite* againſt another in the common Pleas, of Lands or Tenements which are not holden of the King, but of another Lord; then the Lord of whom the Lands are ſo holden, may ſue this Writ directed to the Juſtices of the common Pleas, commanding them, that if it doe appear unto them, that the lands are not holden of the King, &c. but immediately of another, that they do not meddle with the conuſance of that Plea, but that they bid the party ſue his Writ of Right Patent, *ſi ſibi viderit expedire.* And in a Writ of Right, if the Tenant vouch a forreiner to warranty, the Tenant [40] ſhall have a Writ of Superſedeas directed to the Bailiffs of the ſame Court, to ſurceaſe the plea untill the warranty be determined; and if the Bailiffs will not ſurceaſe for that Writ, then the Tenant ſhall have another Writ of Inhibition directed unto the Sheriffe, that he goe unto the ſaid Court, and to inhibit the Bailiffs that they do not proceed in the plea untill the warranty be determined, &c. And if they will not ſurceaſe for that writ, then the Tenant ſhall have attachment againſt the Bailiffs, directed unto the Sheriffe, returneable in the common Pleas, or Kings Bench. H

A Prohibition may be directed unto the Sheriffe at the A ſuit of the Tenant, that he doe not hold plea in a Writ of right, unleſſe battel ſhall be thereupon waged, becauſe that the Tenant hath put himſelfe upon the grand aſſiſe.

And a man may have a Writ of Pohibition directed un- B to the Sheriffe to goe unto the Lords court, and to inhibite the Bailiffs that they do not hold plea in the Lords court of a houſe, &c. *inter A. petentem. & B. tenentem.* And hee may have another Writ unto the Sheriffe, to prohibite the Lord himſelfe, that he do not hold the plea, &c.

And alſo the Tenant may have another Prohibition di- C rected

rected to the Sheriff, to prohibite the Bayliffs of the Biſhoprick of the hundred of *F.* that they do not hold plea in the ſaid Hundred betwixt *A.* Demandant, and *B.* Tenant of Cuſtomes and Services, which the ſame *A.* of him exacts, from his frank Tenement which he holds of him, unleſſe battell thereupon ſhall be waged. Becauſe the ſaid *B.* hath put himſelf upon the grand Aſſize, &c. And if Tenant by receit ſue ſuch a Prohibition, the Writ ought to make mention of the receit.

D Where the Biſhop holdeth plea of an Advowſon, or of the fourth part, or of the third part thereof, then the party ſhall have a Writ of Prohibition directed unto the Biſhop himſelf, in this form:

The King to the venerable Father in Chriſt, A. by the ſame grace Biſhop of Winton. &c. and to his Officials and their Commiſſ. greet. We forbid you, that you hold not plea in the Court of Chriſtianity of the Advowſon of the Church of N. or of the moity, or of the third part or of the fourth part of the Church of N. whereupon S. and F. plain, that R. draws them into plea befo e you, &c. And he may have a Prohibition to the party himſelf *Ne ſequatur*, by theſe words: *We forbid thee that thou follow not the plea in the Court of Chriſtianity of the Advowſon. &c. whereupon C. plaineth that thou draweſt him into the Court &c.* And he may have an Attachment thereupon againſt him, if he follow it there after the Writ cometh unto him.

E And the King for himſelf may ſue forth this Writ, although the plea in the Spirituall Court be betwixt two common perſons, becauſe the Suit is in derogation of his Crown.

F And the King may ſue an Attachment upon the ſame, if they do proceed, &c. And in the time of vacation of a Biſhoprick, the Prohibition ſhall be directed unto the Guidan of the Spiritualties, *& ejus Officiali & Commiſſario.* And a Prohibition lieth for Chauntries, Chappels, Prebends, and Vicarages, &c.

G If a man ſueth another in the ſpirituall court, for a chattel or debt, the defendant ſhall have a prohibition, & the writ ſhall be: *We forbid you, that you hold not plea in the Court of Chriſtianity of chattels or debts &c.* And he may have a writ

unto the party himſelfe that he ſhall not ſue there, &c. and ſhall have an attachment thereupon if they ſue there afterwards, &c. And alſo the king may ſue this Writ, and it may be directed unto the Judge and Party. And the King may have an attachment upon it.

I If a man ſueth another in the Spirituall court for a lay fee, which is land or tenements, or the like, then hee ſhall have a prohibition, and the writ ſhall be; *We forbid you that you hold not, &c. of the Kings Lay fee in S. whereupon he plaineth that* H. *drawes him into plea, &c.* And h may have another Writ unto the party himſelfe, &c. *Ne ſequatur, &c.* and he may ſue an Attachment upon it; and he may ſue an Attachment onely againſt the party, or againſt the Judge only, or againſt both, at the election of the party who will ſue. And if the Judge do dwell in one County, and the party in another County, then if he will have attachment againſt both, he muſt ſue forth ſeverall writs. And ſo it ſeemeth if he ſue ſeverall prohibitions againſt them, he ought to ſue ſeverall attachments againſt them, if he will ſue both, although they be dwelling in one County.

And a man ſhall have an Attachment upon a Prohibi- K
tion againſt the Judge, if he refuſe to receive the Prohibition, and to admit of it.

Vide 11 H. 6. 27. by which it ſeemeth a ſcholer is a ſpiritual thing. 7 H. 41.

And a Prohibition lieth, If a man be ſued in the ſpiri- L
tuall court for the collation unto a Grammer School.

If a man ſue for Treipaſs in the ſpirituall court, the M
King or the party ſhall have a Prohibition and attachment, as before is ſhewed, unto the Judge, or party, or unto them both.

In ſome caſes a man ſhall have a Prohibition when he N
is ſued in the Spirituall court for the tithes of his lands. As if a man be the Kings Tenant, and holdeth of him in chiefe by Knights ſervice, and is ſued in the Spirituall court for the tithes of the demeane lands, hee ſhall have a Prohibition, becauſe that theſe lands muſt come into the Kings hands by reaſon of wardſhip, or by eſcheat; and then perhaps the King ſhall be otherwiſe charged then he ought to be charged, and therefore the ſame ought to bee tryed before the King in his Chancery.

And

And ſo, if a Biſhop grant unto a Preſentee of the church of *Lincolne* the tithes of his demean lands, to him and his Succeſſors; now if the Preſentor be impleaded in the Spirituall court for theſe tithes, the King may grant a Prohibition; and the form is ſuch.

The King to ſuch a Judge greeting, &c. the Venerable Father the Biſhop of Lincoln *hath ſhown to us, that whereas* I. *preſent in the Church of bleſſed* Mary *of* Lincoln, *holds of his gift all the tithes of his demean, his lands, or his demean of* N. *which the ſame Biſhop and his Predeceſſors, Biſhops of the place foreſaid, uſed to conferr, the Prior of Saint* [41] Katherine *without* Lincoln *claiming thoſe tithes to belong to the Church of* B. *drawes him therefore into plea, &c. and becauſe the foreſaid plea touches our Crown and dignity, eſpecially ſince the collation of the ſame tithes to us may be devolved by reaſon of cuſtody, or eſcheat; becauſe alſo the like tithes we conferr in ſome demeans, and likewiſe many of our great men of our Realme in their demeanes; you we prohibit, &c.*

A Alſo a man may ſue a prohibition directed unto the Sheriffe, that the Sheriff do not ſuffer the Kings lay ſubjects to come to any place at the citation of the Biſhop, to make any acknowledgement, or make oath, unleſſe in cauſes matrimoniall and teſtamentary. And the party may have thereupon an Attachment againſt the Biſhop, if he cite or diſtrein any one to appear before him to take an oath at the will of the Biſhop, againſt the will of him who is ſo ſummoned or cited; and by that it appeareth, that thoſe generall citations which Biſhops make to cite men to appear before them *Pro ſalute animæ*, without expreſ- *See 50. N.* ſing any cauſe, are againſt the Law, and the party may have an Attachment againſt the Biſhop for the ſame, and may ſue a Prohibition ſo to do. And if he do expreſſe any cauſe in the citation, it ſeemeth by the writ before, that it ought to be for ſome matrimoniall or teſtamentary cauſe.

B If a man doth acknowledge in the Spirituall court that he oweth another man one hundred pound to pay to him at a day certaine, and after doth not pay the ſame, &c. if hee bee ſued in the Spirituall court

for this debt, he ſhall thereupon have a Prohibition; and ſo if he acknowledge in the Spirituall Court, that he ought to pay to ſuch a one 100 marks at ſuch a day, &c. he ſhall not be ſued in the Spirituall Court for that debt; and if he be, he ſhall have a Prohibition and an Attachment thereupon. But if a man, by reaſon of Marriage, or of a Will, doth acknowledge in the *Spirituall* Court, that he ought to pay 100 marks or any other ſumme, at a certain day, then if he do not pay it according to his acknowledgement, he may by ſued in the *Spirituall* Court for the ſame, and a Prohibition will not lye.

Vide 22. Aſſ. pl. Thorpe. And if a man do acknowledge in the *Spirituall* Court, C to pay a certain debt at a certain day, and doth not pay it at the day, for which the other ſueth him in the *Spirituall* Court, and excommunicateth him there, becauſe he did not pay it at the day, the other party ſhall have a Prohibition againſt him.

If a man do recover a debt in the *Spirituall* Court D againſt another, and after ſueth there to have execution, the party grieved ſhall have a Prohibition againſt the party and the Judge; and an Attachment upon the ſame.

If a man be endebted unto the King, or bounden E to render an accompt unto him, and after his Executors are ſued in the *Spirituall* Court for a debt which doth not concern Matrimony or Teſtament, his Executors ſhall have a Prohibition againſt the Judge, &c. rehearſing the ſpeciall matter, &c.

Where an Abbot, or Biſhop, or other perſon whatſe- F ever, ſueth in the *Spirituall* Court, becauſe he taketh Toll, or other Compoſition or Cuſtome of his Tenants, &c. there the party grieved ſhall have a Prohibition againſt him; or the King may ſue this Prohibition and Attachment thereupon.

Where a man granteth parcell of his Manor to ano- G ther perſon in fee, to be quit of Tythes by Deed, and the Parſon with the aſſent of the Ordinary, grants un-

to

to him, that he ſhall be quit of Tythes of his Manor for this parcell of Land; and if he or his Aſſignee be afterwards impleaded in the Spirituall Court for Tythes of his Manor, or any parcell of the Manor, he or his Aſſignee ſhall have a Prohibition upon that Deed; and if the Deed were made before time of memory, and ſo had continued to be quitted of Tythes of his Manor, he ſhall have a Prohibition if he be impleaded for the Tythes of that Manor, or any parcell thereof, upon the matter ſhewed. *Vide Br.* præſcription 103.

H If a man ſue any Prohibition to any Spirituall Court, and the Judges will not receive the ſame, or will not allow it; and becauſe he bringeth the Prohibition, they make a citation againſt the party, to anſwer before them for the ſame cauſe; now he ſhall have a new Prohibition upon the matter, directed unto the Judges there, &c. And alſo he ſhall have an Attachment thereupon, if they proceed againſt him in their Court. And it is not materiall, whether the Prohibition were ſued legally or erroneouſly, becauſe he ſhall not be puniſhed for ſuing a Prohibition in the Kings Court.

I A man deviſeth Lands in *London* in mayrimony, and by reaſon of this Deviſe, the Abbot, or he to whom the Deviſe is made, ſueth for theſe Lands, or for any parcell thereof in the Spirituall Court by colour of the Deviſe, the party grieved by this Suit ſhall have a Prohibition.

K And if a man ſue another in the Kings Court, in treſpaſſe for Battery, or taking of his Goods, and afterwards is nonſuit, and diſcontinueth the Suit, for which the Defendant ſueth him in the ſpirituall court for Defamation, &c. he who hath ſued in the temporall court, ſhall have a Prohibition againſt him, and an Attachment thereupon, if he ſue againe in the ſpirituall court; and alſo ſhall have ſuch Prohibition unto the Judge, and Attachment againſt him, if he hold plea therein after the Prohibition delivered unto him.

Where a composition is made by deed indented at the time of the avoydance of a prior, that an abbot shall nominate six persons, and that the other shall elect one of them to be prior unto the ordinary; now if he who presenteth, be sued in the spiritual court, because he hath presented one unto the ordinary for to be prior, he shall thereupon have a prohibition against him who sueth there. And if the sub-prior and covent sue in the spirituall court to avoid such presentment, he shall have a prohibition against the Judge, &c. L

[42]

8 Ass. 29. Br. Assize 158. And also the King may have a prohibition directed unto the Ordinary, that he shall not visit the hospitals which are of the Kings foundation, or of the foundation of his predecessors, because that the Chancellor of *England* ought for to visit them, and no other. And so is it of the Kings or his progenitors free chappels, no Ordinary shall visit them, but the Chancellor of *England*, &c. A

6 H. 7. 14. Keble, *vide* 8 Ass 29. Br. Assize 158. Where a common person is the founder of an hospital, which is donative by his letters patents, and doth consist all in temporalties, if the ordinary will visit such hospitall, the founder shall have a prohibition against him; or if the ordinary will cite any of the poor men to appear before him for an hospitall cause, or to remove him; the founder, or his heire, shall have a prohibition. And such hospitall may be appendant unto a manor, as well as the advowson of a church. B

And if a man recover his presentation by *Quare impedit*, and hath his clark admitted and instituted, and another person who claimeth the advowson by provision from the Pope sueth in the spirituall court, for to avoid and remove the other clark, the patron who hath recovered his presentment, &c. shall have a prohibition unto the Judge for to surcease, &c. C

So if the King hath title to present unto an advowson, by reason of a ward who is in the Kings hands, and after the six moneths past, presenteth his clark, who is admitted and instituted, and the bishop present his clark before to the same church for lapse, who was admitted and instituted, &c. by reason whereof the bishops clerk sueth the clerk D

clerk who was preſented by the King, in the ſpirituall court, the Kings clerk ſhall have a prohibition directed unto the Judges, &c. that they ſhall not proceed in the plea, &c.

E If a man ſueth a prieſt, or a monk, or canon, or clerk, in the temporall law, in debt or treſpaſſe, and cauſe him to be arreſted by his body; if they ſue for his arreſt a citation in the ſpirituall court, *de violenta manuum injectione in clericum*, the other ſhall have a prohibition directed unto the Judge. See the Statute 9. E. 2. *Articuli Cleri.*

F If two men are ſworn to give evidence unto a jury, and do ſo, for which certain perſons are indicted, if they who are indicted, ſue them in the ſpirituall court who gave evidence for defamation, they ſhall have a prohibition.

G Where a man ſueth in the ſpirituall court for ſpirituall cauſes, and the defendant purchaſeth a prohibition directed unto the Judges there, and deliver the ſame, and for ſo doing the Judges do excommunicate him, for the offence he did to the church, in bringing a prohibition to them upon a ſpirituall cauſe; the party excommunicate ſhall have a new prohibition upon that matter, commanding them for to revoke the ſame. For a man ſhall not be puniſhed for ſuing forth writs in the Kings courts, whether he have right or wrong.

H If a clerk of the chancery, or any of his ſervants; or the keeper of the great ſeale, or any of his ſervants; or the chancellor, or any of his ſervants, be ſued in *London* before the Mayor or Sheriff for treſpaſſe, they ſhall have a ſuperſedeas directed unto the Mayor, for to ſurceaſe, and bid the party ſue in the chancery, if it be needfull for him. And there are divers forms of theſe writs in the regiſter, and one writ reciteth, That this cuſtome and priviledge was confirmed by authority of Parliament, *Anno* 18. E. 3. *Vide* 4. H. 7. Prohib. 15. *Vid.* 43. D.

I If a woman hath title to ſue a *Cui in vita*, and ſhe ſweare unto the tenant, that ſhe will not ſue the *Cui in vita* againſt him; if ſhe afterwards ſueth forth the writ, for which the tenant ſueth her in the ſpirituall court for breach of her oath, ſhe ſhall have a prohibition, becauſe 11 H. 4. 88.

the oath toucheth a temporall thing, *viz.* land.

If two ſeverall patrons preſent ſeverally to the Biſhop, K and thereupon one ſueth a *Quare impedit*, or a Darrein preſentment againſt the other, and recovereth, and hath his clerk admitted, for which the other clerk ſueth the clerk who recovereth by appeale or otherwiſe, in the Archbiſhops court, becauſe that he was not admitted at the preſentment of his patron; the patron who recovereth ſhall have a prohibition directed unto the Archbiſhop, &c. or againſt the clerke that ſueth there for that cauſe, that he do not ſue for that cauſe, &c.

And ſo is it, if the patron be diſturbed by the pre- L ſentment of a ſtranger, and the diſturbers clerk ſueth the very patrons clerk in the ſpirituall court; or contrary, the clerk of the rightfull patron ſueth the clerk of the diſturber in the ſpirituall court, he who is grieved ſhall have a prohibition.

And if the King do collate unto any Prebendary, or re- M covereth the collation unto any Prebendary, and hath his clerk admitted; and afterwards the clerk who is vexed, ſueth in the ſpirituall court, by means of appellation, or commiſſion, or other cauſe, by which the title of the collation may come in debate, the King ſhall have a prohibition directed unto the Judges where the ſuit is, commanding them that they do not proceed. And if the N King do recover his collation or preſentation unto any church, and after execution of the judgement, is di-
[43] ſturbed by appeals, or citations, or other ſuch means, or if that after the clerk be inducted, the Kings clerk be vexed by appeals, or commiſſions, or citations in the ſpirituall court for this cauſe; then the King ſhall have a writ, directed unto all Sheriffs, Mayors, and other officers, to take and arreſt the bodies of thoſe who made ſuch impediments, to diſturbe the execution of the judgement, or of ſuch preſentations or collations made by the King. And alſo ſhall have a writ of prohibition unto the Biſhops and their officers, that they do not any thing in derogation of his preſentment or collation, or in the execution of the judgement given for the King. And alſo the King may ſue ſuch prohi-

bition

bition directed unto the party himſelfe who ſueth ſuch appeales, provocations, citations, inſtruments or proceſſe, &c. that they do not ſue ſuch, or permit ſuch appellations, provocations, or impediments to be. And the King ſhall have Attachment upon that directed unto the Sheriffe, &c. if the party follow or ſuffer ſuch, &c. to be ſued contrary to that prohibition.

A If the King doe recover his preſentment unto a Church, and hath a writ unto the Biſhop, &c. to remove the others Incumbent, for which the Incumbent ſueth an appeal in the Arch-Biſhops court, &c. by reaſon whereof the Arch-Biſhop ſendeth a Prohibition that he do not admit the Kings clerk pendant the appeal, &c. Then the King ſhall have a writ directed unto the Arch-Biſhop and his Officers, to take off his inhibition, and that they doe nothing, nor ſuffer any thing to be done by others in derogation of the Crown, or of the Kings right; and ſhall have another Writ againſt the Incumbent, that he follow not ſuch appeals, provocations, or other proceſs or impediments. And alſo the King may have an Attachment directed unto the Sheriff againſt ſuch Incumbent, if he go on there after ſuch Prohibitoin directed unto him.

B And it appeareth by the Regiſter, that another common perſon who recovereth his preſentment, or hath title to preſent, ſhall have ſuch writs of Prohibition unto the ſpirituall Judges, or the party, that they ſhall not proceed, or purſue ſuch, &c. and alſo Attachment againſt them if they do, &c. And where the Kings clerk is in poſſeſſion by ſuch recovery, and be after diſturbed by another with force and armes, that he cannot take the tithes and profits of the church, he ſhall then have a ſpeciall commiſſion directed unto the Sheriff, and other the Kings officers, to take ſuch perſons, as well within liberties as without, and to carry them unto the Gaol, and there to remaine till they have other command from the King.

K And if the King do recover his preſentment, and hath a writ unto the Biſhop, and his clerk is inſtituted and inducted, if the Biſhop at the ſuit of others, hath Provocations, or other inſtruments to cite the Kings Incumbent to the court of *Rome*, or elſewhere out of the kingdome; then the King ſhall have a Prohibition directed

directed unto the Biſhop, that he do not cite, nor cauſe to be cited ſuch incumbent, &c. and the king may have an attachment upon it, if &c. And it ſeems, that the king ſhall have a prohibition without any recovery had before, if his preſentee be inſtituted, &c. And ſo it ſeems a common perſon ſhall have and ſue ſuch a prohibition, when the ſuit is to try the title of the preſentment or collation; yet the writs in the regiſter are and ſpeak of a recovery.

11 H. 4. 83. contrary for perſonall things. 4 H. 3. Prohibition 15. See 42. E. 2 h. 4. 10. 4 E. 4. 37. If a man make oath to unfeoff me before ſuch a day, &c. if he do not infeoff me, I cannot ſue him in the ſpirituall court for breach of his oath, becauſe the thing which is to be done is a temporall act, and ſhall be tried at the common law, whether he hath done it or not; and therefore if he be ſued in the ſpirituall court for that cauſe, he ſhall have a prohibition. And if a man be ſued in the ſpirituall court, and the Judges there will not grant unto the defendant the copy of the libell, then he ſhall have a prohibition directed unto them for to ſurceaſe, &c. untill they have delivered the copy of the libell, according unto the ſtatute made *Anno* 2. H. 5. And alſo the defendant may have an action againſt them upon the ſaid ſtatute, if they will not deliver the copy of the libell, whether the cauſe in the libell be a ſpirituall cauſe or not.

37 H. 6. 9. Aſſiſion 46 E. 3. 32. 8 H. 3. Prohibition 19. If a man maketh a deviſe of lands or tenements deviſable, the party to whom the deviſe is made, ſhall not ſue in the ſpirituall court, to have the lands or tenements ſo deviſed; but if he do, the other party ſhall have a prohibition. But if he deviſeth goods or chattels reals, as a term for yeers, or a ward; there he may ſue in the ſpirituall court for ſuch things.

13 H. 6. Prohibition 3. 4 E. 4. 37. 38 H. 6. 14. If a man ſueth in the common pleas for treſpaſſe, if he ſue him in the ſpirituall court for the ſame cauſe, he may ſhew the matter in the common pleas, and ſhall have a prohibition from thence, directed to the Judges, &c. And ſo alwaies when the matter is depending in the common pleas, if he ſue for the ſame cauſe in the ſpirituall court, he ſhall have a prohibition out of the common pleas.

31 H. 8. Br. Prohibition 17. But a man ſhall have a prohibition out of the chancery or kings bench upon his ſurmiſe, ſurmiſing that he is ſued in the ſpirituall court for a temporall cauſe, &c. although he be not ſued in the Kings bench, or other where, for that cauſe.

If

I If a man ſue a *Quare impedit*, and deliver it of record, as he may, and afterward the defendant, or his clerk, ſue a citation againſt the preſentee of the plaintiff; the plaintiff in the *Quare impedit* ſhall have a prohibition in the common pleas, before the return of the writ of *Quare impedit*, becauſe it appeareth on record, that ſuch a *Quare impedit* is depending. 2 E. 4. 11. *Vide* 18. H. 8. 5.

K If a Parſon grant to one by deed, that he ſhall be diſcharged of tythes of his lands, and afterwards he ſueth in the ſpirituall court for the tythes, &c. it is ſaid, that he ſhall not have a prohibition, becauſe he may pretend this matter in the ſpirituall court, to diſcharge him of the tythes. But if it were upon a compoſition made before time of memory, and now the Parſon ſueth for the tythes of thoſe lands, there he ſhall not have a prohibition againſt the Parſon, &c. *Quære* the diverſity, for I think he ſhall have a prohibition in both caſes. The caſe is *M.* 8. *E.* 4. 14. [44]

A If a man promiſe one 10 *l.* if he will marry his daughter; if he marry the daughter, and the other will not pay the money, he ſhall not ſue for the ſame in the ſpirituall court. But if he promiſe one with his daughter in marriage 10 *l.* &c. if he doth marry the daughter, and he do not pay the money, he may ſue him in the ſpirituall court for the 10 *l.* becauſe it concerneth matrimony with diverſity; ſee in 22 *E.* 3. *lib. Aſſ.* *Vide* Com. 305. & 309. 37 H. 6. 8. 45 E. 3. 24. *Vide* 50. S. 22 Aſſ. 70. 17 E. 4. 4. 15 H. 3. Prohibition 22. 16 H. 3. *ibid.*

B If the Teſtator charge his Executors to pay his debts to his Creditors, if they do not pay them, the Creditors may ſue in the ſpirituall court, and they ſhall not have a prohibition, for that this charge of the Teſtator is as a deviſe unto his Creditors, *quod vide H.* 9. *E.* 3 *prohibition* 17. 24.

C If a man giveth goods in marriage with his daughter, and afterwards they are divorced, the wife may ſue in the ſpirituall court for the goods, and no prohibition will lye thereof. 13 H. 3. Prohibition 21 *Vide* 139.

D If a ſtranger do diſturbe the Executors to perform the will, they may ſue him in the ſpiritual court, and no prohibition lieth againſt them for ſo doing. *T.* 4. *h.* 3.

E If a man ſueth a prohibition becauſe another draweth him into the ſpiritual court for an advowſon of a church, &c. upon the attachment upon the prohibition ſued, he may declare, that he did deforce him of great and ſmall tythes, &c. 4 E. 3. 27. 29. Prohib. 2.

If

If one Parſon ſueth another Parſon in the Spirituall F court for tithes of the profits ariſing in one hundred acres of lands, within the bounds and limits of his pariſh being, for which the Patron of the other Parſon purchaſeth an *Indicavit* unto the ſpirituall Judge for to ſurceaſe, &c. then may the Parſon who ſueth in the Spirituall court come into the Chancery, and have a writ unto the Biſhop for to enquire of the value of the Church, according to the tax of tithe now currant, as upon the value of the tithes demanded, and to certifie the King in the Chancery thereof, by letters under his ſeal, with the writ, and it ſeemeth he ought ſo to do before he have a conſultation granted in that caſe.

If a Biſhop will cite or compell the Kings Chaplains, G or the Maſters of the Chancery, which are the Kings chaplaines, to make their perſonall reſidence upon their Benefices when they are Attendants in the King ſervice, they may have a Prohibition unto the Biſhop, &c. and upon the ſame, an *Alias*, *Plures* and Attachment. But if they be not attending in the Kings ſervice, then the Ordinary may compell them to make perſonal reſidence upon their Benefices; and the forme of the Writ is ſuch:

The King to the Venerable. &c. Whereas our Clerk becauſe of reſidence perſonally in their Benefice to be made, while in our ſervice they continue, to be compelled, otherwiſe hereupon to be moleſted or diſquieted ought not; We, and our progenitors, ſometimes Kings of England, *ſuch like liberties and priviledges for our clerks from time beyond the memory of man, always hitherto having uſed; You we command, that our beloved clerk the Parſon of our Church of* B. *&c. which by our precept in our Chancery continually is attendant in our ſervice, to perſonall reſidence in his Benefice, &c. while in our ſervice hee abides, in no manner yee compell, &c.*

And if the Kings Chaplaine be choſen Deane of any Church, which office requireth perſonall attendance and reſidence, and the Biſhop will compell him to take the Deanery, which requireth that perſonall reſidence, by Spirituall cenſures and citation, &c. then he ſhall have a prohibition unto the Biſhop by theſe words; *To you ſtrictly wee forbid, that him* A. *any reſidence in his be-*

neſice

neſice to make, or to aſſume the office foreſaid, or any thing for ſuch reſidence required while in our ſervice foreſaid hee ſo attends, in any manner compel ye; and ſequeſtred if any thing in the fruits, or other Church goods of our ſaid clerk, by the Biſhop or his, on that occaſion appoſed ſhall bee, without delay cauſe it to be releaſed. And ſo if the Clerk abide in the Kings ſervice in the company of our beloved and truſty R. *of* P. *in the parts of Gaſconie.*

And ſo if the Biſhop will amerce the Kings Chaplaines, and compell them to pay a certaine ſumme of money for non-reſidence, they ſhall have a Prohibition.

H If one ſue another out of the Realme, for debt or other cauſe whereof the Kings Court may have conuſance, he ſhall have a Prohibition againſt him, and an Attachment upon the ſame, if, &c. And ſo if one clerk ſueth another upon the tithe of collation of any Prebendary out of the Realme, &c. he may have this Prohibition: And the King may ſend a writ to him who is ſo ſued out of the Realme, commanding him upon paine of forfeiture of ſo much as hee may forfeit, that hee goe not out of the Realme for to anſwer thereunto, whereof the conuſance doth appertaine unto the Kings Court. And alſo the King may ſend unto the Prebend, if hee bee ſued out of the Realme for tithe of the Prebendary, to prohibite him, upon pain of impriſonment, and of forfeiture of what he may forfeit, that he do not go out of the Realm, not anſwer there by his Proctor, or otherwiſe, &c. *Vide Statute Articuli Cleri. cap. 2.*

I And if any man do purchaſe from the court of *Rome* any citation againſt any clerk, or others directed unto the Arch-Biſhop of *Canterbury*, or unto others, to cite ſuch perſons to appear before the Pope, &c. and to anſwer for the collation of preſentation unto any Benefice or Prebendary, then the King ſhall ſend his writ of Prohibition unto the Arch-Biſhop, or other to whom ſuch Proceſs is directed, that they do not cite, &c. and may have another Prohibition to the party himſelfe, and an attachment upon the ſame, &c. [45]

A And when a conſultation is once duly granted, then the

court

court may proceed in the Spirituall court, notwithstanding that the party purchase a new Prohibition directed unto them, if the Libell be not changed, *quod vide* by the Statute of 50 *E.*3. *cap.*4.

The Writ of Prohibition which is called *Indicavit*, most B commonly lyeth betweene four persons, whereof two are patrons, and two clerks, and properly lieth where one clerk sueth another in the Spirituall court for tithes which do amount unto the fourth part of the value of the Church at the least, for if it doth not amount unto the value of the fourth part, but unto the fifth part, the *Indicavit* doth not lie. And this Writ lieth for the patron, and that clerk who is sued in the Spirituall court; and this writ may be sued as well against the Judge as the party. And the King may sue this writ where his clerk is impleaded for tithes amounting to the value of the fourth part of the Church; or of the Church it selfe. And this writ of *Indicavit* lieth as well for the patron where his clerk is impleaded for the Advowson it selfe, or such Vicarage, Prebend, or Chappel, as well as if he were impleaded of the tithes of the Church, Vicarage, Prebend, or Chappel.

And it appeareth by the Register, the writ of *Indicavit* which the King shall have where the Clerk is impleaded in the Spirituall court for tithes, not making mention what is the value of the fourth part, is such.

The King to the officiall of the Bishop, &c. and his Commissaries, greeting. Whereas A. *of* B. *Parson of the Church of* W. *holds all those tithes coming of the Marsh, &c. of our Advowson, the Abbot of* Battel *claiming them to belong to his Church of, &c. drawes him into plea, &c. We prohibite you, &c. whether to us or to the foresaid Abbot belongeth the Advowson of the foresaid tithes, because the pleas, &c.* And this Writ of *Indicavit* ought to be sued by the patron before Judgement given in the Spirituall court, for after Judgement given there, the *Indicavit* is void.

And a man shal not have an *Indicavit*, before the party in C the Spirituall court hath libelled there against the defendant; and the party who sueth the *Indicavit* ought to shew the copy of the libell in the Chancery, before he have the *Indicavit*. And when the party hath libelled in the Spi-

rituall

rituall court, and the party put to anſwer, then it is called and ſaid, That the ſuit is conteſted in the Court of Chriſtianity. 31 H. 6 13.

D And *Indicavit* lieth for tithes and offerings, if ſuit be in the Spirituall court for them, as wel as it lieth of an Advowſon, and that for a common perſon as well as for the King. And the writ of *Indicavit* ſhall not mention that the tithes and offerings which are in ſuit do amount unto the fourth part of the Church, but *decimas provenientes de centum acris terræ*, or of ſuch a Manor; and if theſe tithes be not of the fourth part of the value of the Advowſon, the other party may alledge and ſurmiſe the ſame, and have a conſultation. 4 E. 3. 27. 19. Prohibition 1.

E And alſo *Indicavit* lieth where one party is Parſon imparſonee, and the clerk of the other patron ſueth him in the ſpirituall court for tithes, &c. hee may ſue the *Indicavit*. And ſo if an Abbot be parſon imparſonee of a Church, and another Abbot is parſon imparſonee of another Advowſon, and one ſueth the other for tithes appertaining to his Advowſon, amounting unto the fourth part of the church, &c. the other ſhall have the *Indicavit* againſt him.

And if an Abbot be parſon imparſonee of an Advowſon, and hath a Vicar endowed: then if the parſon be ſued in the ſpirituall court for the fourth part of the tithes of his Parſonage, he ſhall have *Indicavit*: And ſo if the Vicar be ſued for the fourth part of the tithes and offerings of his Vicarage, the parſon, or he who is patron of the Vicarage ſhall have the *Indicavit*, becauſe they are ſeverall Advowſons; the Parſonage one, and the Vicarage another, and there may be diverſe patrons of them, *quod vide Paſche* 31. *H.* 6. in title *Indicavit*.

F If Bailiffs, Mayors, or other who claim juriſdiction to arreſt a man upon a plaint before them, or to attach his goods, &c. do arreſt one for Treſpaſs or contract who was not within their juriſdiction, the party arreſted, &c. ſhall have a Prohibition directed unto them, &c. and the forme is ſuch,

The King to his Bailiffs A. *of* N *&c. Whereas by the Common Counſel of our Realme it is provided, That it is not lawful for any of the ſame Realm but for us, and our Miniſters, ſpeciall authority therefore having, any through their Bailiwick*

Bailiwick or power going, to attach, to answer another upon a contract, covenants or trespasser, without the same Bailiwick or power done, we command you that ye attach not B. to answer any man before you in the Bailiwick upon such contracts, covenants, or trespasser, against the form of the provision aforesaid; and the distress, if any thereupon you have made, cause you to be delivered, &c. And if they will not obey the same, he shall have an attachment against the Bailiffs. And this writ lieth as well upon attachment of goods, as for arresting of the body.

If a woman have lands which she holdeth in Dower or G
[46] of joynt purchase with her husband, or of her owne inheritance, if the Sheriffe have proces out of the Exchequer to levy the husbands debts, which he oweth unto the King: or if the Sheriffe have proces out of another court to levy debts due by her husband unto another person, if the Sheriffe will distrain in the lands which the wife holdeth, &c. the wife shall have a writ unto the Sheriffe that he doe not distrein the wife who holdeth such lands, in the same lands, for the debt of the husband, and the form of the writ is such.

The King to the Sheriffe, &c. Whereas according to the Law and custome of our Realme, women in the lands and tenements which they hold in Dower, of the gift of their husbands, or which are of their owne inheritance, or which they have purchased, for the debts of their husbands to be rendred, ought not to be distreined. And thou, N. which was the wife of A. distreinest, in her lands and tenements which she holdeth in Dower, of the gift of the same A. and also which were of the inheritance of her B. and of the purchase of her B. as of her grievous plaint we have received. We command thee, that her B. in her lands and tenements, which she holds in Dower, or which are of her inheritance proper, or which are of the purchase of her B. for the debt of the foresaid A. sometimes her husband, to be rendred thou distrein not, or to be distreined cause, against Law and custome foresaid; and the distresse, if any &c.

And there is such a writ unto the Sheriffe where proces cometh unto the Sheriffe out of the Exchequer to levy the debts of the husband, *per just' scaccarii, &c.* And in that case shee may sue a writ unto the Barons of the Exchequer, that they surcease to make out such Proceſſe to the Sheriff to distrain

diſtrein the wife in ſuch lands, &c. Another forme of writ unto the Barons of the Exchequer to ſurceaſe for to diſtrain the wife, &c. and with a proviſo in the ſame writ, that they levy the debes of the husbands executors, or of his heir, or of the lands and tenements which were the husbands, &c.

A And if a man ſue another in the County court for debes or chattles which do amount to the ſum of 40 s. then the party ſhal have a prohibition againſt him who is Sheriff, that he ſhall not hold plea thereof, and that he tell the party that he ſue in the common Pleas: and the writ is ſuch:

The King to the Sheriffe, &c. Whereas the pleas of chattels and debts, which reach to the ſum of 40 s. or exceed it, according to law and cuſtome of our Realme, without our Writ ought not to be pleaded, and A. of. B. of a debt of one hundred ſhillings in thy County, without our writ hath impleaded, as we have received; We command thee, that if ſo it be, then that plea in thy County foreſaid, without our writ further to be held, thou ſupercede altogether; and to the foreſaid A. ſay of our part, that our writ of the foreſaid debt, againſt the foreſaid B. for himſelf he purchaſe, if it ſeem to him expedient. Witneſſe, &c. And if ſuch writ be ſued in another court, then the writ ſhall be directed unto the Bailiff of the court. in ſuch form:

The King to his Bailiffs of I. of N. or to his Bailiffes of N. greeting. Whereas the pleas, &c. to be there ought not, and A.B. of that, that the ſame E. rendred to the foreſaid A. chattels to the value of 10l. before you in the court of the ſaid Lord of N. or in our court of N. without our writ impleades, as we have received; You we command at that if it be ſo; then that plea, &c. as a foreſaid. And if they do not ſurceaſe upon this writ, then he ſhall have *Alias*, and *Pluries*, and Attachment againſt them, and alſo an Attachment againſt the party himſelfe.

And if a man do owe unto another man five marks, and he ſue ſeverall pleas for the ſame in the County court, or in any other court againſt the debtor, he ſhall have a prohibition thereof, and rehearſe the matter, and that he would defraud the Kings court of its juriſdiction, and alſo the party of his anſwer, &c. commanding them that they do not proceed, &c. and that he command the party to ſue at the common law in the Kings court, and if they will not ſurceaſe, he ſhall have an *Alias* and *Pluries*, and attachment upon the ſame. &c.

And ſo it is if a man will ſue a writ of covenant in the County court, or treſpaſs, unto his damage of forty ſhillings,

or more, the party ſhall have a Prohibition for the ſurceaſe, and thereupon an *Alias*, *Plures* and Attachment, &c.

And ſo if the executor ſueth in the County, or in a court Baron for a debt of five Marks by diverſe plaints, whereas the debt is upon a contract, or upon an obligation: Now the Defendant may ſhew the ſame, and plead unto the juriſdiction of the court, or he may have a writ of Prohibition directed unto them, that they do ſurceaſe, &c. and if he have judgement in any of the plaints ſued for parcell of the debt, yet in the prohibition he may prohibite him in the plaints which are depending, and that execution of the judgement ceaſe for the reſidue.

And alſo if a man ſue in the County a plaint of twenty pound, and hath judgment to recover in that court, yet the Defendant may ſue a Prohibition, commanding the Sheriff and the Suitors that they do not execute the judgment, although he have before admitted the juriſdiction.

And ſo if after Judgement given and Execution awarded in the County, or in other court Baron, which hath not power to hold plea of debt of the ſumme of fourty ſhillings, &c. or of damages in treſpaſs amounting to ſuch ſumme or more, the party defendant ſhall have a Writ of Prohibition unto the Bailiffs, or unto the Sheriffe or officer of the court, that they do not execution; and if they have deſtreined the party to make ſatisfaction, that then they releaſe the diſtreſſe, and that they revoke what they have done therein.

There is a Rule in the Regiſter; thus, *If pleas of chattels or* B
of debts, which reach the ſum of forty ſhillings, or it exceeds, in the County or another Court are plealed, without our writ, which
[47] *is not to be, let there not be thereupon the writ of Falſe judgement, nor Writ of Recordare, nor Writ of execution of Judgement, except the Court of Cities and others, which alone the cuſtome of ſuch like juriſdiction have.*

8 E. 4. 15. Juſtices lieth without *Vi & armis. Littleton.* And if a man ſueth another in the County or other court A upon a plaint of treſpaſs, *Vi & Armis*, the Defendant may ſue a Prohibition unto the Sheriffe, or unto the Bailiffe, in ſuch form.

The King to the Bailiffs of B. &c. *Whereas pleas of Treſpaſs againſt our peace in our Realme of* England *by force and arms done, according to law and cuſtome of our ſame Realm, without our writ pleaded ought not to be; and* W. *impleads before*

before you in the Court foresaid, of the Land R. of F. of diverse trespasses to the same W. by the same R. against our peace by force and arms, as is said, done as we have received, to the grievous damage of him W. and against the law and custome foresaid; You we command, that if it be so, then the pleas foresaid before you further to hold, you supersede altogether, to the foresaid W. saying of our part, that our Writ of trespass against the foresaid R. he purchase for himselfe, if to him it shall seeme expedient. Witnesse, &c.

B And if one man sueth another in a court Baron, or other court, which is not a court of Record, for charters concerning inheritance or freehold, hee shall have a Prohibition, and the forme is such.

The King to the Bailiffs of R. of P. greeting. Whereas pleas of detinue of charters, or writings franktenement touching many courts which of Record are not, according to the law and custome of our Realm, without our writ ought not to be impleaded, and E. W. of that, that the same W. should render to the foresaid E. three charters before you, in the Court foresaid, without our writ impleaded: as we have received; you we command, that if it be so, then that plea before you in the Court foresaid, without our writ further to hold, you supersede altogether, and to the foresaid E. say of our part that our writ of charters foresaid against the foresaid W. for himselfe he purchase, if it seem to him expedient. Witnesse, &c.

An. 8. *At York this writ was ordained by the Councell.*

Quare non admisit.

C IF a man do recover an Advowson, and hath a writ unto the Bishop to admit his clerk, and he will not admit him, then the party may sue an *Alias*, and a *Pluries*, or Attachment, &c. or may sue a writ out of the Chancery or out of the common Pleas at his election, *de quare non admisit*, as well in the Term time as in the vacation; but the best is in Term time to sue in the common Pleas, and in this writ it behoveth him for to certifie the recovery; and the form of the writ of *Quare non admisit* for the King is such:

The King to the Sheriff &c. greeting: Sum. &c. A. Bishop of Winch' &c. that he be before us such day &c. wheresoever &c. Wherefore whereas lately in our court we had recovered &c. And shall not say in the writ, *Si Rex fecerit te securum*, because the King shall not find pledges, &c.

D And if the King do recover his presentment in the common Pleas, yet he may sue a *Quare non admisit* in the Kings Bench before himself.

And so if a common person do recover in a *Quare impedit* in the common Pleas, and the record is removed by a writ of Error into the Kings Bench and there affirmed; then he shall have a writ unto the Bishop there, and ought to sue *Quare non admisit* against the Bishop there upon the Record, otherwise not. After the Record removed by a writ of Error, the plaintiffe who recovered shall not have *Quare non admisit* untill the judgement be affirmed in the Kings Bench. I

And the *Quare non admisit* ought to be sued in the County F where the Bishop refuseth the Plaintiffes clerk.

And in the *Quare non admisit* he shall recover only damages, and shall not have his clerk admitted by this Writ. G

And if the Bishop hath admitted and instituted him, and H the arch-Deacon will not induct him, he hath no remedie but only in the Spirituall court, as it is said; for it is a good plea for the Bishop to say, that he admitted the clerk, and sent his letters unto the arch-Deacon for to induct him. And I conceive that if the arch-Deacon will not induct the clerk, that the clerk shall have an action on the case against the arch-Deacon because the induction is a temporall act. As if the Sheriffe upon *habere facias seisinam* will not admit him into possession, he shall have an *Alias*, and *Pluries* and Attachment against him. But some have said, that he shall have a citation against the Arch Deacon in the spirituall court and punish him there, for perhaps he may alledge a speciall cause, for which by the spirituall law he ought not to be inducted, which cause cannot be determined in the temporall Court. *Ideo quare.*

And if the Vicar generall do refuse for to admit the clerk, he I *Quare non admisit* shall be brought against the Bishop for that refusall; and if the Bishop do refuse the clerk and afterwards dieth, *quare non admisit* is maintaincable against the Guardian of the Spiritualties, for this refusall made by the bishop: *Tamen quare.*

Vide 21 H. 7. 8. A man recovered in a *Quare Impedit*, and had a writ to the Bishop, who returned that the clerk who was in, had resigned; and that the Church was full of the preferment of J. S. and upon that return the Plaintiff had a *fieri facias* against the Bishop; and after the return, the opinion of the Court was, that he should have *Quare non admisit.*

The bishop is not bounden to admit the clerk, if the Church K be full of the preferment of another party who is not party to the recovery.

If the bishop doth refuse the Kings presentee, and doth after- L ward admit him, yet the King shall have *quare non admisit* against him for that refusall; and so shall a common person in like manner have, as I conceive.

In

M In a *quare non admisit*, the bishop may say, that he did present for lapse.

N And *quare non admisit* was maintainable against the bishops official, *Mich* 9. E. 3.

A If a man do recover in a *quare impedit* his presentment unto a chappel which is donative, then I think that he shall have a writ unto the Sheriff to put the clerk who recovered into possession. [4ª]

B And in a *quare non admisit*, the bishop may sue that the church is litigious betwixt two, &c.

C If a man hath a donative chauntry, which is of the nature, that one name unto another his clerk, and that the other shall institute and induct him; there if he who hath the nomination be disturbed, he shall have a *quare impedit*, and if he do recover, he shall have a writ unto him who ought to install and induct him, to put him in possession. But if he be disturbed by him who ought to install him, then he ought to have a *quare impedit* against him, and after that he hath recovered, he shall have a writ to him who disturbed him, to put his clerk into possession; or he shall have a writ unto the Sheriff, to put the clerk of him who recovered into possession at his election.

Quare incumbravit.

Quare incumbravit ought to be sued in the county where the church is, because the wrong is done there.

D And *quare incumbravit* doth not lye but where the plaintiff E recovereth by judgement of court. And the King may sue a *quare incumbravit* in the Kings bench, although the record of the recovery be in the common pleas; but a common person cannot do so. 17 E. 3. 74.

F And *quare incumbravit* may be sued in the common pleas, although the record be removed in the Kings bench by a writ of error, or in the treasury; but if the record be in the Kings bench, it seemeth then that the party shal sue the *quare incumbravit* there, &c. 17 E. 3. 70. for all.

G And *quare incumbravit* is an originall writ, and shall issue out of the chancery, and not out of the common pleas.

H And *quare incumbravit* doth not lye, until the party hath sued the writ of *Ne admittas* unto the Bishop; for if the Bishop do incumber the church before the writ of *Ne admittas* sued, then the party shall have a *quare impedit*, and not *quare incumbravit*, for the Bishop cannot have notice until the *Ne admittas* be delivered unto him. And if the Bishop, after the *Ne admittas* delivered unto him, do admit his clerk for whom it is

found by the *Jure Patronatus*, yet the other party shall have *Quare incumbravit* against him. And in *Quare incumbravit* he shall have judgement to recover damages, and also his presentment. But so shall he not have in *Quare non admisit*, but onely damages. I

And in 21 E. 1. it was adjudged, that a man shall have *Quare incumbravit*, without making mention of any recovery in the writ, or in the court. But by the rule of the register, he ought to mention the recovery, and that seems to be the better opinion. K

And after the *Ne admittas* delivered, if the six months passe, the Bishop may present his clerk for lapse, and shall not be charged by the *Quare incumbravit* for that presentation; but it seemeth he cannot admit the clerk of the other man after the six months past, for that shall be against the writ of *Ne admittas* delivered unto him. And also if the Bishop do present the clerk of the other party after the six months, who had presented unto him before, that presentment maketh title to the party, although it be after the six months; by which it seemeth that the *Quare incumbravit* lyeth then for the party. L

And if the plaintiff be nonsuit in *Quare incumbravit*, he may sue a new *Quare incumbravit*, and may vary from his count upon the first writ. And it is a good issue, that he did not incumber, &c. after the prohibition delivered unto him. M N

And if a man hath a *Quare impedit* depending, and he sue a *Ne admittas* to the Bishop, and afterwards the Bishop do incumber the church within the six months with his chaplain, or with the defendants chaplain, then the plaintiff shall have *Quare incumbravit*, and the form of the writ shall be such: O

The King to the Sheriff of Lincoln *greet. If* A. *shall, &c. then sum.* H. *Bish. of* Linc. *that he be before our Justices, &c. to shew why, when the same* A. *in our court, before the foresaid Justices, had recovered against B. his presentation to the church of* J. *by consent of our court foresaid; yet the same Bishop, hanging the plea in the foresaid court before the foresaid Justices, the same church incumbred, to the no small damage and grievance of him* A. *and against the law and custome of our realm. Witnesse, &c.*

And if he do not appear at the return of the writ of *Incumbravit*, nor at the *Alias*, then the *Distringas* shall be in the end, *In manifest contempt of us and our commands, and manifest weakning the confid. of our court; and have there, &c.* P

And if a man hath a writ of right of advowson depending between him and another, and the church void pendant the Q

writ,

writ, the plaintiff shall not have *ne Admittas* to the bishop, nor the writ of *Quare incumbravit*, although the bishop incumber the church; for the demandant shall not recover the presentment upon this writ, but the advowson; and if he hath title to present, he may present, and have a *Quare impedit* if he be disturbed.

Juris utrum.

R *Juris utrum* is a writ of the highest nature that a parson can have, and he shall have this writ where the lands or tenements are aliened by his predecessor, or if a recovery be had against the predecessor, by default, or by reddition, or for want of pleading of the predecessor, where he hath not prayed in aide of the patron and ordinary. But if he do pray in aid of the patron and ordinary, and they joyn in aid, and render the land, or confesse the action, then the successor of such a parson shall not have this writ against that recovery. And also if a man recover by action tried against a parson, lands, or tenements, by verdict, and the parson doth not pray in aid of the patron and ordinary, yet his successor shall have a *Juris utrum*, and shall not be put to a writ of attaint. 19 H. 40. Forteſc. If annuity be recovered against a parson, his successor shall not have *Juris utrum* upon that recovery, for that nothing is taken out of the possession of his successor; but a charge onely upon the successor which shall binde him. [49.]

A And if a man intrude into lands and tenements after the death of a parson, the successor shall have this writ of *Juris utrum*; and so if a parson be disseised of lands and tenements, parcell of his rectory, and dieth, his successor shall have a *Juris utrum*.

B And also a parson may have an assize of lands or tenements of his rectory, or a writ in the *Quibus*, in the nature of an Assize, or a writ of *Entre* in the *Per*, or *Cui*, or in the *Post* upon a disseisin made to himself, but not upon a disseisin made to his predecessor, but shall be put to sue a *Juris utrum*, &c.

C Also a parson may have a cessavit, if his tenant who holdeth of him cesseth, &c. or a writ of Escheatry, if his tenant die without heire. And by the statute of *is est* 2. he may have *quod permittat* of common pasture. Vide 57. f

D And if a parson with the assent of the patron and ordinary, leaseth his glebe lands for life, and the tenant alieneth in fee, or loseth by default, it seemeth the person who leased the land, shall have a *Consimili Casu*, during the life of tenant for life; and after the death of the tenant for life, a writ of *Entre ad communem legem*. Vide 50. b

E And if an abbot or prior be parson impersonee of a church, and alieneth the land of the rectory, his successor shall have a

Juris utrum to recover the land, and not other writ, because he shall have that as parson.

And if a man leaseth lands unto one for life, and afterwards F granteth the reversion by licence unto a Parson and his Successors, and the Tenant attorneth, and after the Tenant for life loseth the land by default, or alieneth in fee, the Parson shall have a Writ *de Consimili casu* during the life of Tenant for life, and after his death he shall have a writ of *Entre ad communem legem, &c.*

And if a Parson lose by action tryed, or loseth by default, G his Successors shall have a writ of Error or Attaint.

And if a reversion be granted unto a Parson, and his Suc- H cessors by licence, he shall have a *Quid juris clamat*; or if the services of a Tenant be by licence granted unto a Parson and his Successors, he shall have a *Per quæ servitia*, and so of a writ of *quem redditum reddit*, &c.

And so if a Parson be Tenant in common of a wood or o- I ther land in the right of his Church with another, and the other Cap. 22 part 49. Tenant do wast in the wood, or land, &c. the Parson shall have a Prohibition, and if he do waste, he shall have a writ of partition, and the place wasted shall be assigned to the other party by the Statute of *West.* 2. *cap.* 22. But if a Parson be K patron of Vicarage, and the Vicarage void, and a stranger doth present, the parson shall have a *quare impedit*, or Darrein presentment: but if the six months passe, he shall have a Writ of right of Advowson, because that that Writ is given only for him who hath the entire fee and right in him, and the parson hath not the same, for the right is in the patron and ordinary.

Nor shall a parson have a Writ of Right *sur disclaymer*, L nor a Writ of customes and services, nor an *Injuste vexes*, nor such writs as are grounded upon the meer right. But it seem- 29 E 3. *Juris utrum*, &c. Vid. N. 125 Britt. eth he may have *contra formam collationis*, or *Feoffamenti*, and a writ of Mesne, and *Ad terminum quem præterit*, &c. and such possessory writs which are not grounded upon the meere right.

And a parson or a vicar shall have a writ of *Juris utrum* a- M gainst those who are severall Tenants, and then the forme of the writ shall be such:

The King to the Sheriffe of S. greeting. If L. *the Bishop of* N London *Parson of the church of* E. *shall secure thee, &c. then sum. twelve free and legal men, &c. of the vicnew of* E. *that they be before our Justices at* Westm. *such day, &c. ready by oath*

&c

to acknowledge, whether twenty acres of land with the appurtenances in E. *are frankalmoing belonging to the church of him* L. *or Lay fee of* A. B. *and* C. D. *and in the meane time that land let them view, and ſummon &c. the foreſaid* A. *who two acres thereof holdeth;* B. *who eight acres thereof holdeth;* C. *who five acres and one roode holdeth; and* D. *who four acres of land and three roodes thereof holdeth, that then they be, &c.*

O And two Prebendaries may be one parſon in one Church, and then they ſhall joyn in a *Juris utrum*; and their writ ſhall be ſuch: *If* W. *Prebendary of* N. *and* H. *Prebendary of the Prebend of* I *in the church of bleſſed* Peter *of* York, *parſon of the church of* A. *foreſaid, to the Prebends annexed ſhall, &c. then ſummon twelve, &c. as aforeſaid.*

P And where a man is parſon of the moitie of the church, and another clerk is parſon of the other moity of the ſame Church, then one may have a *Juris utrum*; and the writ ſhall be ſuch: *If* W. *Parſon of a moity of the church of* N. *ſhall, &c. then ſum. twelve, by oath to acknowledge whether &c. is be frankalmoign belonging to the moity of him* W. *of the Church foreſaid, or frankalmoign belonging to the other moity of* R. *Parſon of the other moity of the Church foreſaid, &c.* And Dean and Chapter may have *Juris utrum* in ſpeciall caſe where they are wardens of a chauntry; thus,

Q *The King to the Sheriffe of* London *greeting, if the Deane and Chapter of the Church of* S. Pauls *of* London, *gardians of the chauntry at the altar of the bleſſed* Mary *in the Church of* S. Paul London, *for the ſoul of* Ric. D. *ordeined, ſhall ſecure you, &c. then ſum. &c. of the venew of the city of* London, *that they be before our Juſtices at* Weſtm', *ſuch day, &c. whether* 20. s. *rent with the appurt. in the ſuburb of* London *are &c. with the appurt. to the chauntry of the gardians to the Altar foreſ., or lay fee &c. and in the time the ten' whence the rent. Witneſſe, &c.*

[50]

A Where a parſon alieneth the right of his Church with warranty, and afterwards the alienee is impleaded, and vouch-
B eth the parſon, who entreth into the warranty and loſeth by a-
C ction tryed, his Succeſſors ſhall have a *Juris utrum* of the ſeiſin of his predeceſſor which he had before the alineation. And a vicar ſhall have a *Juris utrum* againſt the parſon for the glebe of his vicarage which is parcel of the ſame church. If a parſon receive rent or fealtie of the Tenant of the land which is alienned by his predeceſſor, he ſhall not during his life have a *Juris utrum*; but his Succeſſors ſhall have *Juris utrum.*

40 E. 3. 27. 2 H. 42. *Quære.* 11 H. 4. 17. 11 E. 3. *Juris utrum.* 19. Eliz. Dy. 239, 240. 22 H. 8. B. accept. 14. 2 E. 6. B. accept. 20.

If a writ of right be brought against a parson, who joyneth D
the mise without praying in aid of the patron and ordinary, and afterwards loseth by default, his successor shall have *Juris utrum*. Otherwise is it if he loseth the land by verdict, as it seemeth.

If a parson have a chappel annexed to his parsonage, to which E
chappel glebe is appurtenant, the parson shall have *Juris utrum* of the same.

A recovery in a *cessavit* against a parson by default, shall not F
bar his successor, but he must have a *Juris utrum* against him who recovered.

If the chaplain of a chauntry lose the lands of his chaunary G
by an assize of *novel disseisin*, yet he himself shall have a *Juris utrum*, because that that is his writ of right; and the writ is to enquire, whether it be frank alms of the chauntry, &c. or lay fee, &c. *H.* 19. *R.* 1.

1 E. 1. *Quod permittat* 9. 32 E. 1. Coment. 24. H
The parson or vicar shall have a *Quod permittat* in the *debet solement*, of his own seisin, or of the seisin of his predecessor, and may have that *Quod permittat* in the nature of an assize of *Mortdauncester*, upon the dying seised of his predecessor.

In a *Juris utrum*, the plaintiff ought to be named person or I vicar, or such name, in right of which name he bringeth his action: For if an Abbot, or a Bishop, or a Deane, bring a *Juris utrum*, by reason of Land which is parcell of the rectory annexed to the Bishoprick, or appropriated unto the abby or deanry, they ought to be named parsons of the church in the writ.

In a *Juris utrum*, if the tenant at the first day do make de- K fault, Resummons shall be awarded; and if he make default again at the summons returned, then the Jury shall be taken. And the tenant shall plead in a *Juris utrum*, as the tenant shall plead in assize of *novel disseisin*, *scil.* two or three dilatories to the writ, *& si trove ne soit*, then to pray the jury to enquire of the points of the writ.

And where the *Juris utrum* is brought against severall te- L nants by severall summons in the writ, it may be taken against one onely for that parcell, and afterwards against the others. But it is otherwise in an assize of *Novel disseisin*, if it be not in speciall cases.

Writ

N IF the Biſhop cite any of the pariſhioners of the church to be contributary unto the repaſations of the pariſh church, or unto any chappel annexed thereunto, if the party who ſueth the prohibition directed unto the Biſhop, ſuppoſe that he is impleaded of a lay fee in the ſpirituall court, the biſhop ſhall have a conſultation upon the matter ſhewed in the chancery on the part of the biſhop. *See the ſtatute de circumſpecte agatis.* 13 E. 1 Raſtall prohibition. 3.

O And ſo if a man obtain any judgement or ſentence in the ſpirituall court for a legacy of money, or other chattels, if the executors will ſue a prohibition for to delay the execution of the judgement, the party ſhall have a conſultation. 37 H. 6. 3. Aſhton.

P And if any chaplain of the Kings free chappels keepeth any concubine, then the biſh. may cite him before him for to puniſh him; and if the chaplain purchaſe a prohibition, becauſe the Kings free chappels ought not to be viſited by the biſhop, yet upon the matter ſhewed, the biſhop ſhall have a conſultation to proceed to correct him, by pain corporall, and not pecuniary.

Q If a prior and covent ſue in the ſpirituall court for tythes and mortuary, *F.* parſon of the church of *C.* and an abbot cometh into the chancery, and ſurmiſeth that *F.* holdeth the church of his patronage, and that the prior, &c. claimeth the third part of the church of his own advowſon and patronage, and prayeth an *Indicavit*, and the ſame is granted; now the prior, &c. may ſhew this matter in the chancery, and have a conſultation, becauſe that in the ſtatute of *Articuli Cleri* it is contained, that in Diſmes and Mortuaries, when under theſe names they are propoſed, there is no room for our prohibition. St. Articuli cleri. cap. 1.

R If a prior ſueth in the ſpirituall court for the moity of the tythes of four plough lands, which he claimeth as appertaining unto his church of *N.* whereof he is parſon impaſſonee, which are not of the value of the fourth part of the church; if the other purchaſeth an *Indicavit*, ſurmiſing that they are of the value of the fourth part; he who is ſued in the ſpirituall court ſhall have a conſultation to proceed, while nothing is done of the advowſon of any part of the church, the ſaid prohibition notwitſtanding.

S If a man promiſe unto another with his daughter in marriage 10 *l.* by reaſon whereof the party marrieth his daughter, if *Vide* 44. a. 14 E. 4. 6. 17 E. 4. 6. Com. 309.

[51] if he who promiseth the money will not pay the money, he shall be sued for the same in the spirituall court; and if he purchase a prohibition, the other shall have a consultation; and if he who promised the money dieth, yet the husband who married his daughter may sue the executors for that money, or the executors of his executors, in the spirituall court.

And if any of the parishioners do disturb any parson or vi- A
car to carry his tythes by the usuall wayes and passages, the parson may sue in the spirituall court for this disturbance; and if the other sue a prohibition upon the matter shewed, he shall have a consultation.

If a parson or vicar have a pension out of another church, B
and the pension is kept from them, or another parson taketh and claimeth the same, the parson or vicar who ought to have the pension, may sue for the same in the spirituall court; and so if a parson, or vicar, or master of an hospitall, sue for a pension in the spirituall court, which they and their predecessors have had time out of minde, &c. If the other party purchase a prohibition upon the matter shewed, he shall have a consultation; and yet it seemeth, that upon the prescription he may maintain a writ of Annuity at the common law, but the same is in his election. But if he once sue a writ of Annuity at the common law for the same, and declare thereupon the prescription, then he shall not afterwards sue in the spirituall court for that annuity in the name of a pension; and if he do, it seemeth the party may have a prohibition against him.

38 H. 6. 19. And a parson may sue in the Spirituall court a Spoliation C
against another for taking of his tithes, or for taking of any pension which doth appertain to his Church, although they claim by severall patrons and of their severall presentments: But this is intended onely where the tithes and profits taken and spoyled doe not amount unto the fourth part
Vide 36 A. of the value of the Church, for if they claim by severall Patrons, and Tithes, profits or pension amount unto the fourth part of the Church, then the party grieved shall have
18 H. 6. 19. For where the tithe of the patronage is in question, there is no Spoliation, an *Indicavit*, because the tithe of the Patronage doth come in debate, &c. But if they claim by one and the same patron and of his presentment, then one parson shall have a Spoliation in the Spirituall court against the other, although the profits doe amount unto a fourth part, or a third part or the moity of the church, because the tithe of patronage comes not in debate;

and

and if a Prohibition be ſued thereupon, the party ſhall have a conſultation.

D It a man have his ſheep lying and feeding for one year in a pariſh, the Parſon of the pariſh may ſue in the Spirituall court for tithe of wool of thoſe ſheep, and if the party ſue a prohibition, he ſhall have a conſultation.

E And note, that conſultation ſhall be granted and directed to the party himſelf who ſueth in the Spirituall court, that he do not proceed in his ſuit there; and alſo may have a conſultation directed unto the Judge, commanding him to proceed there notwithſtanding the prohibition aforeſaid.

F And the parſon may ſue the executors of his Predeceſſor in the Spirituall court for the dilapidations, and for that ſumme of money which is found by the enqueſt charged by the biſhop or ordinary, that the dilapidations doth amount unto, to pay the ſame; and if the Executors ſue a Prohibition, the party who ſued in the Spirituall court ſhall have a Conſultation directed to the ſame, &c. to proceed; and another Conſultation directed to him to ſue as before.

G And a man doth detain his tithes for his ſheep, which are in the pariſh, and there feeding for halfe a year, and if he dye, the Parſon may ſue his executors for theſe tithes in the ſpirituall court, and ſhall have a Conſultation if the executors ſue a Prohibition. And the Parſon by preſcription may claim the tithe of Claves and Kine, and Milk of cattel feeding in the pariſh, from the feaſt of the holy Trinity, unto the feaſt of Saint *Peter*, which is ſaid *ad vincula*, and the tithes of wool of the pariſhoners ſheep, killed or dying from the feaſt of Saint *Michael*, untill the feaſt of *Eaſter* every year, and the tithes of hony and wax coming of bees, and of the bee-hives within his pariſh, and may ſue for them in the Spirituall court; and ſhall have a conſultation if he be diſturbed by Prohibition.

H And a man may ſue in the Spirituall court for a Legacy where a man diviſeth *ſalvica Eccleſiæ* 20 s. &c. the Parſon may ſue the Executors for the ſame in the Spirituall court, &c. and may ſue the executors in the Spirituall court for the tithes of Mills due by the Teſtator in his life time. And ſo a Vicar may ſue in the Spirituall court for the tithe of beans and oates ariſing within certaine limits within his pariſh, and ſo he may ſue for *decimis pannagiis provenientibus de boſco ſuo*; & *pro pullanis* coming of his Eſquiry, and for butter, cheeſe, and

milk

milk', *in tempore hiemali*. But it ſeemeth the ſame ought to be by preſcription. And it was agreed before the Kings Councel in the Parliament holden at *Salisbury*, That conſultation ought to be for *ſilva cædua*, notwithſtanding they be not renewed by the year.

29 H. 8. 13. A man may ſue in the Spirituall court, where another man doth deſame him, as a falſifier, and adulterer, or an uſurer, &c. I

And a Parſon or other Prieſt may ſue in the Spirituall court, for laying violent hands upon him, &c. to have him excomenge or to have corporall puniſhment, but not to have amends there. K

12 H. 7. 23. per Conſtable.

11 H. 4. 88. [52] Where a Prior ſueth a Parſon in the Spiritual court *Produbus partibus decimarum provenient*' of the demeans of *F.* whereof the Parſon hath ſpoiled the ſaid prior, for which the parſon purchaſeth an *Indicavit* in the Chancery, ſurmiſing that the tithes do amount unto the fourth part of the value of his church, and that the King is patron thereof, by reaſon of the wardſhip of an Infant in the Kings hands, by reaſon whereof the Prior cometh into the Chancery, and ſheweth there that the tithes do not amount unto the fourth part of the value of the church, and hath a writ directed unto the Biſhop to certifie the King into the Chancery the value of the church which the Parſon holdeth, and the value of the tithes demanded by the Prior: If the Biſhop by his letters certifie for the Prior, then the Prior ſhall have a Conſultation. And ſo it ſeemeth by this writ, that where an *Indicavit* is ſued, &c. the King ſhall be certified by the biſhops letters upon a writ directed to the biſhop, what is the value of the church, and alſo what is the value of the tithes demanded in the Spirituall court, before a conſultation ſhall be granted; and it ſeems to be a good rule and a good order, ſo as no party ſhall be deceived, and this certificate of the biſhop ſhall bind the party to ſay or averre any thing againſt it. But a Conſultation ſhall be granted upon the certificate returned, &c. but notwithſtanding that, if it be unto the fourth part of the value of the Church, the party may ſue a writ of right of tithes, &c. L

11 H. 4. 84. So if the Biſhop certifie that J. S. is utlage or in priſon at the time of the utlagary, 15 E. 3. utlagary. 2 Biev. Eſtoppel. 211

If a biſhop make an order, that the Parſon of ſuch a church ſhal yearly pay unto the Abbot of B. & his ſucceſſors two parts of the profits of the church in the name of a yearly penſion; and that the parſon before he have poſſeſſion of the church take an oath ſo to do, for which the parſon ſueth in the court of *Rome*, & obtaineth a delegacy directed unto the biſhop and his officers, to repeal the order, &c. now if the Abbot ſueth a Prohibition A

upon

upon this matter, the parſon ſhall have a Conſultation.

B If a lay man will not make his offerings at dayes limited to the pariſhoners to offer, or will not confeſſe himſelfe unto his curate, or receive the Sacrament of our Lord Jeſus Chriſt of his curate, by reaſon whereof the curate citeth and ſueth him in the Spirituall court for the ſame; if he purchaſe a prohibition, &c. upon ſhewing the matter a Conſultation ſhall be granted.

C If the churchwardens of any church have uſed time out of mind to receive yearly of one of the tenements of the pariſh a book of wax to maintain the Taper before the Crucifix, and in the church, and he who is now tenant of the tenement refuſeth to pay this wax book, &c. there the church-wardens may ſue in the ſpiritual court for the ſame; and if he obtain a Prohibition, conſultation ſhall be granted. See for their capacity at the common Law. 11 H. 4. 12. 7 H. 6. 30. 12 H. 7. 27. 8 E. 4. 6.

D If a man be condemned in the Spirituall court in a cauſe of defamation, for which he appealeth unto the court of *Canterbury*, &c. and there the ſentence is confirmed, and the party condemned in twenty ſhillings for coſts, and the cauſe remitted unto the Judges before whom it was firſt commenced, by reaſon whereof he who is condemned ſueth a Prohibition, the 12 H. 7. 23

E other party ſhall have a conſultation. If a parſon doth detain from the pariſhoners the goods of the church, and in his will he enjoyneth his Executors to deliver them unto the pariſhoners, the pariſhoners may ſue the Executors in the Spirituall court for them, and if he ſue a prohibition, the pariſhoners ſhall have a conſultation, and this conſultation may be ſued by any of the pariſhoners, who will ſue in the ſpirituall court.

F If the biſhop or his officiall cite any man for laying violent hands upon any clerk, *&c.* if he ſue a prohibition, the other may have a conſultation; *Dummodo agitur ad pœnam corporalem, & non pecuniariam &c.* See 51. K.

G If a man in time of the vacation of a parſonage or vicarage will not pay his tithes; and the ordinary *ex officio* cite him to pay them, &c. if he purchaſe a prohibition, the other ſhall have a conſultation granted unto him.

H If an Abbot and Covent are bounden by reaſon of any ordinary lawfully made to find four chaplains to ſing in ſuch a church or chappel for the ſouls of ſuch or ſuch; and if they fail to find them, they bind themſelves in diverſe pains and cenſures, & if they fail in all or in part to find theſe chaplains, they have granted that the Deane of *Salisbury* or his officiall ſhall interdict their church, and ſo hold it until they have ſa-

tiſfied

tisfied, &c. for which the Dean or his officiall, *ex officio* cite the Abbot and covent to find the said chaplains, &c. if they sue a Prohibition, the Deane or officiall shall have a consultation in that case.

If the Ordinaries do forbid the Fryers, that they shall not I
hear confessions, nor they shall not admit any one to be buried in their church, and sue them in the Spirituall court for that cause, if the Fryers purchase a prohibition; the Ordinaries shall have a consultation.

If a man sueth in the Spirituall court for taking and detain- K
See 51. J. ing from him his wife lawfully married unto him, if the other sue a prohibition for the same, hee shall have a consultation, for as much as for restitution of his wife onely he sues, &c. And yet he may have an action at the common law *de uxore abducta cum bonis viri*, or an action of trespasse for taking the wife, as it seemeth.

And a Prior shall sue for a pension of forty shillings in the L
spirituall court, whereof the house hath been seised time out of mind, and shall have a consultation thereupon, if a Prohibition be sued, &c.

If a man recover in the Spiritull court in a cause of defama- M
tion costs, hee shall sue there for the costs; and if the other sue a Prohibition, he shall have a consultation.

[53]
52 H. 7. 21. And if a man have corporall punishment in the Spirituall A
court for a cause of defamation, or for laying of violent hands upon a clerk, &c. if the party will redeem his penance, and promise to pay unto the party a certain summe for his damages, &c. if after he will not pay the money unto the party, the party damnified may sue for the same in the Spirituall court; and if the other party purchase a Prohibition, he shall have a consultation.

If a Parson for an offence have judgement to be deprived in B
the Spirituall court, and the Parson doth present another parson unto the ordinary, who sueth the first parson in the Spirituall court because he will not void the church, but defend himselfe by appeales or other matters, &c. Now if the first parson purchase a prohibition, the other may sue a consultation; or without any prohibition sued by the first parson, the parson may sue a writ in the Chancery unto the Spirituall Judge to proceed in the Spirituall court upon the cause of deprivation and disability.

Upon

C Upon a Legacy given to any Order of Friars, they may sue the Executors in the Spirituall Court for the same. And if the Executors purchase a Prohibition, they may have a Consultation upon the matter shewed, *&c.*

D If Friars or other persons whatsoever sue in the Spirituall Court for a Legacy, and have process against others as Witnesses in that Cause; If the Witnesses will sue a Prohibition, surmising that they are sued against their wills, *ex Officio Judicis* in the Spirituall Court, *&c.* Yet he or they to whom the devise is made shall have upon the matter shewed a Consultation.

And note, That the Justices of the Kings Bench may grant a Consultation of Tithes, as well as the Chancellor. And when the Justices grant a Consultation of Tithes of Spoliation, they make the Libel indorsed in such manner. *Our Lord the King hath not Conusans in the Court Ecclesiastical of spoliation of Tithes, for as much as the right of the patronage or advowson of Tithes is not to come in debate.* And so they give no power by the endorsment, and the Rule in the Register is by those words.

E *Nota*, that the Justices said, That Tithes shall not be but of such things which increase from year to year, and that by the manure of man: but that is against the *Decretals*.

F And all the Justices are against a Consultation in a Cause of Defamation, because, it seems, he may have his Action at the Common Law for the same Defamation. 27 H. 8. 13. ac. Br. Consultation 7.

G Also of Coals, nor of Quarries, nor the like, a man shall not pay Tythes, nor of Agistwert, because that he payeth Tithes for the Cattell which feed in the Pastures. Register 55. Br. Dismes 18.

H And also they say, That properly a Consultation ought not to be granted, but in case where a man cannot recover at the Common Law in the Kings Court,

I And if the Bishop cite a man *ex officio* for to appear before his Officers for fornication, *&c.* or such like offences, and the party defendeth himself by Appeals, or such other delayes, and by suing a Prohibition unto the Spirituall Court, and afterwards he waves the delayes and submits himself to the Judgement of the Spirituall Court, and they delay to proceed in these Causes for the vexation and delays and the smart of the prohibition which the party had before, Then the party shall have a Writ directed unto the Spirituall Judge, That they do proceed *in cause of defamation penally*,

Canonical to impose, and in case of submission, &c. *Provided that whatsoever may turn to derogation of our royall right, by you by no means be attempted.*

If the very Patron present an able parson to the Ordinary, K and the Ordinary refuseth him, and afterwards a disturber presenteth unto the Ordinary another parson unto the same Church, and the Ordinary doth admit, institute, and induct him, and afterwards the very Patron recovereth his presentment against the disturber, for which cause the presented of the very Patron sueth the presented of the disturber in the Spirituall Court to avoid and remove him; for which cause he sueth a Prohibition, *&c.* Now the presented of the very Patron shall have a Consultation unto the Spirituall Court to proceed in that Case, *&c.* But first the Record in the common Pleas ought to be certified into the Chancery of the Recovery or of the Composition there made of the Tithe of the presentment before the Consultation shall be granted.

If the Tenants or Possessors of any Lands or Tenements L within any Parish have used to finde a Chaplain to say Divine Service in the Parish Church, *&c.* time out of mind, *&c.* and afterwards they withdraw, and will not finde such Chaplain, *&c.* Then the Parson and Parishioners shall sue against them in the Spirituall Court for to finde such Chaplain in the Church: And if the Tenants or Possessors of the Lands sue a Prohibition upon the matter shewed in Chancery, the Parson and Parishioners shall have a Consultation to proceed, and by such words, *To you we signifie that in that cause as to the Chantry foresaid, to its old state,* &c. *and due punishments by occasion of such subtraction upon him,* &c. *to be imposed by you is done, lawfully proceed, and further do you may what you know to the Court Ecclesiastical to belong, our said prohibition, or any other to you in the cause foresaid, hereafter to be directed notwithstanding.*

And, *&c.* if it be after time of memory, 15. in the time of *R.* 1. and before the Statute of Mortmaine, the Parson and Parishioners shall have such suit for a Chantry, *&c.* [54] And if the Parson and Parishioners sue one such Tenant and Possessor of the Lands to finde such Chaplain, *&c.* And he sue an Inhibition from the Court of Canterbury; or appeal unto the Court of Canterbury, or make such subtill delaies in the Court of Canterbury, then the Parson and Parishio-

Pariſhioners ſhall have a ſpecial Writ unto the Archbiſhop and his Officers: *What in the Caſe and Proceſſe foreſaid, before you in the Court of Cant. by vertue of the appeal foreſaid devolved, as to the Chantry, to the due ſtate to cauſe to reduce, to the due puniſhment by occaſion of ſuch ſubſtraction upon him, &c. to be impoſed, and to the ſentence againſt him pronounced. If rightly they are deduced, in their ſtrength to cauſe to remain by you is done, rightly proceed, and further do you may, &c. our ſaid Prohibition notwithſtanding.*

A If a man deviſe an Oxe, or a Cow unto the Church for reparations thereof, or for the Church-yard, and he who hath the Cow or the Ox will not deliver the ſame unto the Churchwardens: Then the Ordinary *ex officio*, Or the Churchwardens may cite him and ſue him for the detaining of the Cow or Ox, and if the other party ſue a Prohibition, the Churchwardens ſhall have a ſpecial Conſultation. *To you we ſignifie that in the caſe foreſaid, as to reſtitution to the ſame Wardens of the Legac. foreſaid, in form foreſaid, pain Canonical upon him to impoſe for the detaining of the ſame before you is done, lawfully proceed, and further do you may as to the Court Eccleſiaſtical, &c. our prohibition notwithſtanding.* And if he will not proceed upon that, they may ſue an Attachment, *&c.*

B And in many Caſes a man ſhall have a ſpecial Conſultation: As if a Parſon ſue in the Spiritual Court for Tithes of great Trees which paſſe the age of 20. years, and makes his Libell by the name of *Sylua Cædua*; Now the party may ſhew in the Kings Bench or in the Chancery, that the Trees were great Trees above the age of 20. years, and upon this ſurmiſe he ſhall have a ſpeciall Conſultation to proceed *ita quod de ſylua Cædua*, and not of other Trees which are paſt 20. years growth, or the age of 20. years. And ſee the Statute for the ſame *Anno* 45. S. 3. *cap.* 31.

C If a man have a Chappell within his Mannor which is a Donative Chantry, or preſentable, and the Chaplain hath uſed to have the Tithes ariſing of the demeans of the Mannor time out of minde, *&c.* Now if a Parſon (in whoſe Pariſh this Chappel is) ſueth the Lord of the Mannor and alſo the Chaplain in the Spiritual Court, for the Tithes of the ſame Mannor; they ſhall have a Prohibition, *&c.* becauſe the Advowſon of this Chappel may come unto the King, by Wardſhip or Eſchear, *&c.* And then the Parſon

within whose Parish this Mannor and Chappell is, shall have a special Writ of *Scire facias* against the Lord of the said Mannor, and also against the Chaplain, returnable in the Chancery at a certain day, if they can say any thing wherefore a Consultation shall not be granted, and the Writ of Prohibition revoked and repealed, and further to do as the Court shall award in that case. And in the end of the Writ shall be, *Et habeas ibi nomina coram per quos ei scire feceritis*, &c. *& hoc Breve*, &c. which Writ appeareth in the Register in the end of the Writs of *significavit*.

See Com. 471. in Mo. Jins Case. Plow. commends this form of &c. facias; but there is another form used at this day.

Writ of Vi Laica Removenda.

Old nz. Br. 3 Cons. and Marrow in his reading

THis Writ of *Vi Laica removenda* lieth as well upon a surmise made by the Incumbent, or by him that is grieved, &c. without any Certificate thereof made in the Chancery by the Bishop, as upon a Certificate thereof made in the Chancery by the Bishop.

And when the Bishop makes Certificate into the Chancery of the force, then the form of the Writ is such: *The King to the Sher. of Linc. greeting, At the request of the venerable Father the Bishop of Linc we command thee that all Lay force, which is held in the Church of S. of his Diocesse, to the perturbing him the Bish. so that his Office Spiritual in that Church exercise he cannot, without delay thou remove from it*, &c. And he shall have an *Alias* and a *Pluries* and an Attachment against the Sheriff directed unto the Coronors, if he do not serve nor return the Writs.

And if the King do collate unto any Prebend of any Bishop come to him by Tithe, and the Bishop make resistance that the Kings presentee cannot have the corporal possession thereof, Then the Writ shall be directed unto the Sheriff, and shall be such:

We command thee that all Lay force and armed, which is held in the said Church, or houses to it annexed, our peace in thy Coun. to perturb, without delay thou removest, and if any in this part resisting thou findest, those by their bodies attach thou, and in our prison safely keep, so that those thou mayest have before us in the Octav of St. Hill &c. wheresoever, &c. to answer us for the contempt and resistance foresaid, and have there the names of those you shall attach. And this Writ of *Vi Laica removenda*, may be made returnable, or not returnable, at his pleasure who will sue

ſue the Writ, and it may be returned into the Common Pleas as well as into the Kings Bench.

And note, That by this Writ the Sheriff ought not to remove the Incumbent who is in poſſeſſion of the Church, whether the poſſeſſion be of right or wrong, but only for to remove the force, and to ſuffer the Incumbent for to enjoy the poſſeſſion: And if the Sheriff do amove or would put out the Incumbent who is in poſſeſſion, the Incumbent ſhall have a Writ directed unto the Sheriff, commanding him that he do not put him out; and if he hath put him out, that without delay he make him amends: and if he do not ſo do, the party may have an *Alias* and *Pluries*, and Attachment againſt the Sheriff: and the form of the Writ *de vi laica removenda* without the Certificate, is ſuch, [55]

A *The King to the Sheriff of S. greeting: We command thee that all lay force, or armed power, which is held in the Prebend of* B. *in the Church of* C. *our peace to perturb, without delay, thou amove from it; and if any there reſiſting thou findeſt in his part, then taking with thee a ſufficient poſſe of thy Coun' if need be, thoſe attache thou by their bodies,* &c.

And the form of the Certificate of the Biſhop is ſuch;

B *To the moſt excellent Prince, and his L. the L.* Henry *by the grace of God,* &c. W. *by permiſſion Divine of* York *Archbiſh. of* England *Primat, health in him by whom Kings reign, and all things ſubſiſt. To the royall Highneſs we make known by theſe preſents, that ſome of their own ſalvation unmindfull, the poſſeſſ' of* M. I. *in the Church of* C. *of our Dioc' canonically upon him conferred, which* A. *ſometime held occupied to the prejudice of our Office, and of the liberty Eccleſiaſtick and of the right of the foreſ. I. hinder, and perturb. Therefore to your Excellency humbly we ſupplicate that this force, and power altogether to amove the arm of your royal Power with your wonted grace you would put forth, that the rebellion of Chriſts enemies, ſo by your aid may be repreſſed, that the Church liberty under the ſhield of your defence may ſafe remain and unhurt. and you gain from God a condign retribution therefore, who for his Church and people long conſerve you. Given at* B. *the fourth of the Calends,* &c.

Writ of Waſt.

C THe form of the Writ of Waſt againſt Tenant in dower doth vary from the form againſt other Tenants, for the

Writ of Waſt againſt Tenant in dower is ſuch;

The King to the Sher. &c. If A. ſhall ſecure thee, &c. then ſum' by good ſum' B. which was the wife of C. that ſhe be before our Juſtices at Weſtm' the quind. of Trin. to ſhew why ſhe made waſte, ſale, deſtruction, and exile, in the Lands, houſes, woods, gardens, and men, which ſhe holds in dower of the inheritance of the forel. A. in N. to the diſheriſon, &c. And in that writ he doth not rehearſe the Statute which gave the Writ of waſt, nor the Writ of waſt againſt the Guardian, becauſe they were puniſhable at the Common Law before the Statute by Prohibition and Attachment thereupon, if thy did waſt. And *exilire in hominibus* ſhall not be put in the Writ of Waſt if the Tenant in Dower, or other Tenant do not miſuſe the villeins of the Mannor, by reaſon whereof they depart from the Mannor, or from their Tenures; and if they do, then it is Waſt. And in a Writ of Waſt againſt Tenant for life or years, he ſhall recite the Statute in ſuch form,

The King to the Sher. &c. If A. ſhall ſecure thee, &c. then ſum' by good ſum', B. &c. Why, whereas of the Common Counſel of our Realm of England it is provided, that it ſhall not be lawfull for any man, waſt, ſale, or deſtruction to make in Lands, houſes, woods or gardens, the ſame B. of Lands, houſes and gardens in L. which the forel. A. to him demiſed, &c. made waſt, &c.

39 E. 3. 15. And if an abbot bring a Writ of Waſt againſt Tenant in Dower, the Writ ſhall be, *To ſhew why ſhe made waſt in Lands, &c. which ſhe holds in dower of the right of his Church, to the diſheriſon of his Church, and ſhall not ſay of the inheritance of him the Abbot, nor to the diſheriſon of him the Abbot, &c.* But if ſhe here bring a Writ of Waſt againſt the Tenant for life of his anceſtors, then the Writ ſhall ſuppoſe that the Tenant holdeth *de hæreditate, &c.* and that the waſt is done *ad exhæreditationem ſuam, &c.* and that they *have made waſt of Lands they hold in Dower* of the wife, yet the husband doth not hold Dower. D

& 3 Ma. Dy. 229.

And the Writ of Waſt ſhall be always brought againſt the Tenant in dower, or Tenant by the Curteſie, although they have granted over their eſtates unto others. E

If the Husband make a Feoffment of his Land, or a ſtranger doth abate after the death of the Husband, or diſſeiſeth the Husband in his life time, and afterwards the Wife recovereth her dower againſt the ſtranger, &c. If he bring a Writ of Waſt againſt the Wife, the Writ ſhall make mention of F

the

the Recovery, &c. how ſhe recovered the Land againſt him.

G If a Feme hold in dower of the King who hath the reverſion, and the King granteth the reverſion in fee unto a ſtranger, and afterwards the feme committeth waſt; now the grantee ſhall have a Writ of waſt, and the Writ ſhall make mention how ſhe holdeth of the King, and how he hath granted the reverſion unto a ſtranger, &c. and that ſhe who held in dower of the ſtranger of the Kings grant hath committed waſt, &c. So if the husband dieth, and the heir maketh a feoffment unto a ſtranger in fee, who aſſigneth dower unto the wife, and ſhe commits waſt, the Writ ſhall make mention, That ſhe held in dower of the gift of her husband by the aſſignment of a ſtranger, of whom the aforeſaid feme held in dower of the aſſignment which the heir of the husband hath made to the ſaid ſtrangers, *ad exhæreditationem* of him who bringeth the Writ. The form of the Writ of waſt where

3 and 4 Eliz. *Dy.* 206, 208

H the wife is endowed *ex aſſenſu patris*, is ſuch:

[56]

The King, &c. *If* S. *then ſum'*, &c. *which was the wife of* R. *that ſhe be*, &c. *to ſhow why ſhe made waſt* &c. *which ſhe holds in dower of the gift of the foreſ.* R. *heretofore her husband, of the aſſent of* A. *of* B. *father of the foreſ.* R. *of the foreſ.* S. *of the Aſſignment of the ſame* A. &c. And if the wife do recover her dower againſt the father, then the Writ of Waſt ſhall make mention of the Recovery, thus; *and which the ſame* Iſabell *in our Court before our Juſtices of the Bench, by conſideration of the ſame Court recovered as her dower againſt the foreſ* A. *to the diſheriſon of him* S, &c. And then the Writ may be of Mills and Vivaries: and then the Writ ſhall be, *To ſhew why he made waſt in lands houſes, mills, woods, vivaries and gardens.*

A And if the Gardian in Chivalrie grant over his eſtate who maketh waſt, the Writ of Waſt ſhall be brought againſt the Grantee, and not againſt the Gardian, and it is not like Tenant in dower, or by the Curteſie: but if the Gardian do commit waſt, and afterwards granteth over his eſtate, then the heir ſhall have an Action of Waſt againſt the Gardian, and not againſt the grantee; And ſo if Tenant for life or years commit waſt, and granteth over his eſtate, the Writ lyeth againſt him who doeth the waſt, and not againſt his grantee. And the form of the Writ againſt the Gardian is ſuch: *The King*, &c. *If* A. *ſhall*, &c. *then ſum'*, &c. *why he made waſt*, &c. *which he hath, or had in cuſtody of the inheritance*, &c. *to the diſheriſon*, &c.

And againſt the Executor of the Gardian, the Writ is; B

Sum', &c. B. and C. Executors of the Teſtament of, &c. why they made waſt, &c. which they had in cuſtody after the death of the foreſ. B. of the inheritance, &c. to the diſheriſon. &c.

20 H. 6. 1. ac. In a Writ of Waſt againſt Tenant by the Curteſie, the C form of the Writ by the Regiſter is to recite the Statute, and yet it ſeemeth the Writ is good, although that he do not recite the Statute, and the form of the Writ is;

The King, &c. If A. ſhall, &c. then ſum', &c. why whereas of the Common Counſel of our Realm of England, it is provided that it ſhall not be lawfull for any man waſt, ſale or deſtruction to make in Lands, houſes, woods or gardens to him demiſed, for term of life or years, or of thoſe which by curteſie of the land they hold, the ſame B. of houſes which he holds by curteſie of England, of the inheritance of the foreſ. A. in N. hath made waſt. to the diſheriſon of him A. and againſt the forme of the proviſion foreſ. as is ſaid, &c. and have, &c.

And if the heir grant the reverſion of Tenant by the Cur- D teſie unto another in Fee, and the Tenant attorn, *&c.* then the form of the Writ is ſuch;

The King &c. If the Abbot of B. &c. ſhall ſecure thee, &c. then ſum' B. &c. why whereas (as aforeſ.) the ſame B. of the houſes in N. which he holds for life of the ſame Abbot which A. of whom the ſame B thoſe held by curteſie of England of the inheritance of the ſame A. aſſig', &c. to the foreſ. Abbot, hath made waſt.

And if the heir granted the reverſion unto another ſtran- E ger in Fee, and the Tenant by the Curteſie doth attorn, and afterwards granteth over his eſtate by the Curteſie to another ſtranger, and afterwards that ſtranger committeth waſt, now the grantee of the reverſion ſhall have his Action of Waſt againſt the grantee of the Tenant by the curteſie, and not againſt the Tenant by the curteſie, for he cannot be Tenant by the curteſie, if not of the heir, &c.

But if the Tenant by the Curteſie grant over his eſtate F unto a ſtranger, and the grantee commit Waſt, the heir ſhall have the Action againſt the Tenant by the curteſie, and not againſt the grantee who committed the waſt. But if the heir have obtained, or granted the reverſion in fee, &c. & after the Tenant by the curteſie attorn, and after grants over his eſtate unto a ſtranger who committeth waſt, now the grantee of the reverſion ſhall not have an Action of Waſte againſt the Tenant by the curteſie, but againſt the grantee of the

Tenant

Tenant by the curteſie. And if a feme be Tenant in dower, and ſhe grant her eſtate unto a ſtranger, and after the heir granteth the reverſion in fee unto another, and the Tenant attorneth, and after the Tenant for terme of life commits waſt, it ſeemeth that the grantee in reverſion ſhall have an Action of waſt againſt the grantee of the Tenant in Dower, as he ſhall have againſt the grantee of the Tenant by the Curteſie: The form of the Writ of Waſt againſt the Tenant for life or years, is ſuch: 11 H. 4. 18. 10 H. 4. Attornment. 16. the Attornment of Tenant in Dower is good.

G *The King*, &c. *If A. ſhall*, &c. *then ſum'* B, &c. *Whereas of the Common Counſel*, &c. *in Lands*, &c. *to him demiſed for term of life, or years, the ſame* B. *of Lands, houſes, woods, gardens in* L. *which the foreſ.* A. *to the foreſ.* B. *demiſed for the life of him* B. &c. *Or thus, which* F. *father or mother, or any other anceſtor of the foreſ.* A. *whoſe heir he is, to the foreſ. demiſ. for term of years, hath made waſt.* &c. *to the diſheriſon.* &c. *and againſt the form of the proviſion foreſ. as is ſaid, and have*, &c.

H And by the Statute of *Marles cap.* 23. it is ordered; *That Farmors*, &c. *ſhall not make waſt in houſes*, &c. *or exile of men.* By which Statute the Writ of Waſt, *de exilio hominis* is warranted, &c. 1 E. 3. waſt. 113.

I In a Writ of Waſte, if the premiſes of the Writ recite, *That it ſhall not be lawfull for any man to make waſt in houſes, woods and gardens*; in the end of the Writ it is ſaid, That the defendant hath done waſt in Lands, houſes, woods, gardens and exile of men, ſo as there is more in the end of the Writ then is in the premiſes, yet the Writ is good, and ſo if leſſe be in the end of the Writ then is recited in the premiſes, yet the Writ is good. As if it be recited, *quod cum proviſa ſit quod non liceat alicui facere waſtum*, &c. *in terris, boſcis & gardinis*; and in the end it is recited, *quod* the defendant *made waſt in Lands only, or in woods, or in houſes only*, yet the Writ is good. [57]

A If an Abbot make a Leaſe for life or years, and dieth, and the Leſſee afterwards committeth waſt, the Writ ſhall be ſuch; *The King*, &c. *If the Abbot* &c. *then ſum'* B. *why whereas of the Common Counſel*, &c. *the ſame* B. *of the houſes in which the foreſ. Abbot*, &c. (if the Abbot himſelf make the Leaſe) and if his predeceſſor made the Leaſe, then thus: *Which* R. *heretofore Abbot*, &c. *predeceſſor of the aforeſ. now Abbot to the foreſ.* B. *demiſed for the life of him* B. *or for terme of years, if the caſe be ſo, made waſt.* &c. *to the diſheriſon of the Church of him the Abbot.* And the like ſhall be for a Prior, of Maſter of an Hoſpitall.

And

And againſt the Executors the Writ ſhall be ; *Sum' I. and K. Executors of the Teſtament of* L. *that they be, &c. the ſame Executors of Lands which to the foref.* A. *the foref.* L. *demiſed, for term of years have made waſt, &c.*

And if a man make a Leaſe to a feme ſole of chaſes, and ſhe C take husband, and the leſſor dieth, and ſhe and her husband commit waſt, the Writ for the heir ſhall be thus :

The King, &c. If A. *ſhall then ſum'* B. *and* C. *his wife, that, &c. why, whereas, the ſame* B. *and* C. *of the viviries in* L. *which they hold for the life of her* A. *and by demiſe which* F. *father of the foref.* A. *whoſe heir he is, thereof made to the foref.* C. *have made waſt, &c.*

And another Writ for the heir, where Land is leaſed to husband and wife, and the heir, and the husband dieth, and the wife committeth waſt, the Writ ſhall be, *The ſame* A. *of houſes in* L. *which ſhe holdeth for her life of the demiſe which* W. *thereof made to the ſame* A. *and the foref.* B. *heretofore her husband, and to the heir of him* B. *father of the foref.* H. *whoſe heir he is, hath made waſt, &c.*

And another Writ when a gift is made unto the husband and wife, and unto the heir of the body of the wife, and the wife dieth, and the husband committeth waſt, the heir ſhall have a writ of waſt, and the writ ſhall be :

The ſame A. *of houſes in* B. *which he holds for his life, of the demiſe which* W. *thereof made to the foref.* A. *and* M. *heretofore his wife, and to the heirs of the body of her* M. *mother of the foref.* B. *whoſe heir he is iſſuing, hath made waſt, againſt the form, &c.*

And if a man leaſeth Lands for terme of life, and hath D 3 or 4 ſiſters, and dieth, and they make partition of the lands, and of the reverſion, and the tenant for life committeth waſt, that ſiſter and her husband who hath the reverſion ſhall have a writ of waſt, and the writ ſhall be :

The King, &c. If A. *of* B. *and* M. *his wife, ſhall &c. then ſum'. &c.* F. *why, whereas of the Common Council, &c. the ſame* F. *of houſes, &c. in* L. *which he holds for life of the demiſe of* S. *of* C. *of the purparty of her* M. *to her of the inheritance which was* S. *her brothers of whom one heir ſhe is by partition betwixt them* M A. *and* B *ſiſters of the ſame* S. *thereupon made happening, hath made waſt, &c.* Or thus : *in* L. *which he holds for life of the foref.* M. *of the demiſe of* A. *father of the foref.* M. *of whom one heir ſhe is, of the purparty of the ſame* M. *of the inheritance of the foref.*

foreſ. A. *happ', hath made waſt*, &c. And if Tenant for term of life grant over his eſtate unto another, and the grantee committeth waſt, the writ ſhall be:

The King, &c. *If* B. *ſhall*, &c. *then ſum'*, &c. *the ſame* A. *in the houſes in* N. *which he holds for the life of* I. *of the demiſe which the ſame* I. *to whom the foreſ.* B. *thoſe demiſed for the ſame terme thereof made to the foreſ.* A. *thereof hath, made waſt*, &c. And if Tenant for terme of life grant over his eſtate, and the grantee granteth over his eſtate, then the writ ſhall be thus:

The King &c. *If* M. *of* R. *Prebendary of the Prebend of* F. *in the Church of bleſſ.* Peter *of* York *ſhall* &c. *Then ſum'* R. &c. *why, whereas*, &c. *the ſame* R. *of the houſes in* L. *which he holds for term of life of* A. *which was the wife of* H. *of* N. *of the demiſe of* N. *of* O. *who thoſe held for the ſame term, of the demiſe of them* H. *and* A. *to whom* A. *and* M. *of* O. *heretofore her husband* W. B. *heretofore Prebendary of the foreſ. Prebend, predeceſſor of the foreſ. Prebend, thoſe demiſed for the lives of them* M. *of* O. *and* A. *made waſt*, &c. *to the diſheriſon of the Prebend him* B. *and againſt the form of the proviſion foreſ. &c.*

F And by that it appeareth, That if a Prebendarie or Parſon maketh a Leaſe for term of life, he or his ſucceſſor ſhall have an Action of waſt. If *M.* leaſeth Lands unto I. for terme of life, and dieth, and *L.* ſon and heir of the ſaid *M.* granteth the reverſion unto *H.* in fee, and *H.* granteth this reverſion unto *A.* in fee, and afterwards the Tenant for life committeth waſt; now the writ of waſt brought by *A.* ſhall be ſuch: 10 H. 7. 5.

The Kings, &c. *If* A. *ſhall* &c. *then ſum'* I. &c. *why*, &c. *the ſame* I. *of houſes in* L. *which he holds for life of the foreſ.* A. *of aſſignement of* H. *of whom the ſame* I. *thoſe held for term of his life, of the aſſignement which* L. *ſon and heir of* M. *who thoſe to the foreſ.* I. *demiſed for the ſame term therefore made to the ſame* H. *hath made waſt*, &c.

G If *S.* and K. his wife ſeiſed in fee, leaſe the Land unto *O.* for term of life, and afterwards *S.* dieth and *D.* takes *H.* to husband, and K. the wife grant the reverſion unto *A.* in fee, and afterwards *D.* attorneth, and committeth waſt, and *A.* bringeth waſt, the Writ ſhall be:

[58]

The King &c. *If* A. *ſhall*, &c. *then ſum'*, &c. B. *that have*, &c. *the ſame* B. *of the houſes in* N. *which he holds for his life of the foreſ.* A. *of the aſſignement which* H. *and* K. *his wife, which* K. *and* S. *heretofore thoſe to the foreſ.* D. *demiſed for the ſame term, thereof made to the foreſ.* A. *hath made waſt*, &c. If *M.*

leaſeth

leaſeth Lands for years unto F. which F. maketh I. his Exe- H
cutor and dieth, and I. leaſeth the Lands unto R. and after-
wards N. granteth the reverſion in fee to P. and P. granteth
the reverſion to M. in fee, and after R. tenant for life com-
mitteth waſt, the ſaid M. ſhall have a writ of waſt, and the
writ ſhall be:

The King to the Sher', &c. If M. *ſhall, &c. then ſum', &c. R. ſhall be be, &c. why, whereas, &c. the ſame* R. *in houſes in* L. *which he holds for term of years of the demiſe of* I. *execut' of the teſtam. of* E. *to whom* N *thoſe demiſed of the foreſ* M. *of the aſſig' of* R. *of whom the ſame* R. *thoſe held for the ſame term of the aſſig' which the foreſ.* N. *thereof made, to the f. reſ.* P. *hath made waſt, &c.*

F. leaſeth Lands unto E. and *A.* his wife, and unto the A
heirs of E. and afterwards E. dieth, and B. his ſon and heir
granteth the reverſion unto C. in fee, and afterwards *A.* com-
mitteth waſt, the Writ ſhall be:

The King, &c. If C *ſhall, &c. then ſum'* A. *&c. why, whereas, &c. the ſame* A. *in the houſes in* B. *which he holds for his life of the foreſ.* C. *of the aſſig. which* B. *the ſon and heir of* E *to whom, &c. and the foreſ.* A. *heretofore his wife* F. *thoſe demiſed, to leave to them* E. *and* A. *and to the heirs of him* E. *thereof made to the foreſ.* C. *made waſt, &c.*

M. leaſeth Lands for life unto *C.* and *A.* her husband, and B
A. dieth and *C.* taketh to husband *T.* or. *F.* and *T.* and *C.*
his wife leaſe the Lands unto *P.* or F. and who leaſeth the Lands
unto *I.* and afterwards *M.* granteth the reverſion unto *R.* in
fee, and *I.* committeth waſt, and *R.* bringeth a Writ of waſt,
the Writ ſhall be ſuch:

The King, &c If R. *ſhall, &c. then ſum'* I. *&c. why, whereas, the ſame I. in houſes, or lands which he holds for the life of* C. *wife of* T F. *of the foreſ.* R. *of the aſſignat' of* M. *of whom* P. *of* H. *which thoſe to the foreſ.* I. *for that term demiſed, thoſe held for the ſame term of the demiſe of the foreſ.* T. *and* C. *to whom* C. *and* A. *heretofore her husband the foreſ.* M. *thoſe demiſed for the life of thoſe* A. *and* C. *which he thereof made to the foreſ.* R. *hath made waſte &c.*

R. leaſeth Land unto *Annice* and *F.* her husband for term
of their lives, the remainder to *N.* daughter of *F. D.* for
term of her life, the remainder to the right heirs of *F. D.* and
afterwards *T.* right heir of *F. D.* granteth that remainder un-
to *B.* of *C.* in fee, and afterwards *F.* husband of *Annice* dieth,
and

and ſhe committeth waſt, the Writ of waſt ſhall be ſuch:

C *The King &c. If* B *of* C. *ſhall &c. then ſum' &c.* Annice *which was his wife, &c. why, whereas, &c. the ſame* Annice *in woods. &c. which ſhe holds for her life, of the foreſ.* B. *of* C. *of the aſſignation which* F. Couſ. *and heir of* J. D. *of whom the ſame* Annice *thoſe held for the ſame term, of the demiſe which* R. *made to the foreſ.* A. *and* J. *heretofore her husband, for the life of them* A. *and* J. *ſo that after the death of the ſame* A. *and* J. *the foreſ. wood to* N. *daughter of* J. *of* D. *for her life ſhould further remain, and after the death of her* N. *thoſe woods to the right heirs of the foreſ* J. D. *ſhould remain, there thereof made to the foreſ.* C. *hath made waſt,* &c.

D And by this Writ it appeareth, that he in the reverſion ſhall have a Writ of waſt againſt Tenant for life, where there is a mean eſtate in remainder for life to another.

There is another Writ of waſt in this form:

The King, &c. If J. *and* C. *ſhall &c. then ſum', &c.* J. *why, &c. the ſame* J. *of the houſes which ſhe holds for her life, by a fine thereupon in our Court before* W. *of* C. *and his companions our Juſtices of the Bench by our Writ, betwixt the foreſ.* C. *and* J. & R. *of* P. *levied. and which after the death of the foreſ.* T. *and* J. *to the foreſ* C. *and* J. *and the heirs of the body of the ſame* J. *and* C. *iſſuing ought to remain by form of the fine foreſ. hath made waſt. &c.*

E A man leaſeth the Lands for term of life unto *E.* the remainder to *M.* for life, and afterwards granteth the reverſion in fee to one *B.* father of *R.* whoſe heir the ſaid *B.* is; and afterwards the firſt Tenant for life dieth, and the Tenant in remainder entreth and committeth waſt, now the Writ ſhall be: *The K. If* R. *ſhall, &c. then ſum' &c.* J. *of* C. *and* M. *his wife, &c. why, whereas. &c. the ſame* J. *and* M. *in the Lands which they hold for life of her* M. *of the foreſ.* R. *of the aſſign' which* J. *of* C. *who the Land to the foreſ.* J. *of* E. *for his whole life, ſo that after the death of him* J. *of* E. *the ſame Land to the foreſ.* M. *for her whole life to have it, to remain demiſed, made thereof to* B. *the father of the foreſ.* R. *whoſe heir he is, have made waſt, &c.*

F And there are other forms of Writs in the Regiſter which are not mentioned here for the length of them, *ideo quære librum.*

G And there is another form of Writ of waſt, for the Lord by Eſcheat, who hath the reverſion by eſcheat, *&c.* 3 H. 6. 1. no 12.

And

And there is a Writ of waſt in the Regiſter for him in the H reverſion againſt Tenant by *Elegit*, who hath Lands and Tenements in execution for debt or dammages. And ſo a-
21. E. 2. 3. & 27. contr. 26 E. 3. *Weſt.* 200. contr. gainſt Tenant by *Elegit*, who hath Lands in execution by Recognizance of debt: and alſo againſt his Executors who hath Lands in execution by *Elegit*: and it ſemeth to ſtand with good reaſon that the Action doth lye.

But ſome ſay, That he againſt whom the Execution is ſued ſhall not have an Action of waſt, becauſe he may have a Writ of *Venire facias ad computandum*, &c. and there the waſt ſhall be recovered in the debt; but by the Action of waſt he ſhall recover treble dammages, and ſo it ſeemeth he ſhall not do by that Writ of *Venire facias ad computandum*.

And alſo if a man hath Lands in Execution by *Elegit*, and afterwards he in the reverſion granteth the reverſion unto a ſtranger in Fee, That the grantee ſhall have an Action of Waſte againſt the Tenant by *Elegit*, ſeems reaſonable, becauſe the Waſte is to his diſinheritance, and he ought not to ſatisfie the debt due by the Grantor.

And *vid.* 21. E. 3. in title *Sc. facias*, Whether Recogniſor had a *Scire facias* upon his ſurmiſe, that the Recogniſee had levied all the debt by cutting of Trees.

If a man have common of Eſtovers in the woods of ano- I
[59] ther, and he who is Tenant and owner of the wood cutteth down all the wood, he who ought to have the Eſtovers ſhall not have an Action of Waſte, but ſhall have an Aſſize of his Eſtovers: For the Action of Waſte doth not lye, but upon a Leaſe made, or againſt Tenant by the Curteſie, or Tenant in Dower, or Gardian.

Note. 12 H 4. 3. per Hankford, in a writ of waſt, the Writ doth not recite the Statute, wch proves that a prohibition was againſt the Gardian at the common Law. If Gardian in Chivalrie commit Waſte, The heir ſhall A have an Action of Waſt, as well at full age, or within age.

And if a man be in ward unto the Lord by reaſon of the uſe of Lands, becauſe that certain perſons were ſeized in Fee of the Lands holden by Knights ſervice unto the uſe of his Father and his Heirs, Now if the Gardian commit Waſte, The Heir within age, or of full age, ſhall have the Action of Waſte againſt the Gardian, and yet the Heir hath not the Reverſion of the Lands, but the Uſe only: But that is given by the Statute of 4. *H.* 7. *cap.* 17.

And if the Gardian do commit Waſte, he ſhall loſe the Wardſhip, and if the Wardſhip be not ſufficient to anſwer the Dammages for the Waſt, then he ſhall render Dammages unto

unto the value over and above the loſſe of the Wardſhip, by the Statute of *Glouceſter*, cap. 5.

B If the King commit the Wardſhip of the Heir in Ward unto another, and the Committee doth Waſt; Then upon a ſurmiſe thereof made in Chancery, the King ſhall ſend a Writ unto the Eſcheator, to go to the Land and ſee if Waſt be done, and to certifie the King thereof in the Chancery.

If Eſcheators do commit Waſt in Lands which they have in their hands in cuſtody, The heir within age, or of full age, ſhall have an Action of Waſt, and ſhall recover treble dammages againſt them, and they ſhall ſuffer impriſonment two years at the leaſt at the Kings pleaſure. And ſo if Eſcheators do commit waſt in other Lands ſeized into the Kings hands by Enqueſt of Office, *A°.36.E.3. cap.13.*

And Eſcheators, not other Gardians of Lands in the Vacation of the Temporalties of Biſhopricks or Abbies ſhall not do waſt, *&c. A°.14.E.3. pro Clero. cap. 4. & 5.*

C And if Tenant for term of life, or in Dower, or by the curteſie, or for years, grant over their Eſtate unto divers unknown perſons, *&c.* to defraud him in the reverſion, and afterwards waſt is committed, he in the reverſion ſhall have an Action of waſt againſt the firſt Tenant who took the profits, *&c. A°. 11 H.6. cap.5.*

D There is another Writ of waſt which lieth betwixt two Tenants in common of Lands or a Wood in Fee ſimple, and the form of the Writ is ſuch.

The King. &c. *If* A. *ſhall,* &c. *then ſummon* B. *to ſhew why: Whereas* A. *and* B *hold a wood of* J. *in* N. *in common, the foreſaid* B. *of the ſame wood hath made waſt,* &c. *to the diſhariſon of him* A. &c. *and have there,* &c. And this Writ lieth as well of Lands, Piſcary, Turbary and the like, as of woods when they are holden in common, ſee the Statute of *Weſt. 2. Cum duo vel tres,* &c. *turbariam, cap.22.*

E The heir within age ſhall have an Action of Waſt againſt the Gardian in Socage.

The heir at full age ſhall have an Action of Waſt againſt the Kings Committee, *&c.*

F If two have a reverſion unto them, and unto the heirs of one of them, they ſhall joyn in an Action of Waſt againſt Tenant for life. 22 H. 6. 25. *Newton ac.*

G Gardian in Socage ſhall not puniſh waſt done by a ſtranger. 28 H 6. *Waſt.* 9.

Waſt

Waſt ſhall be brought againſt Tenant for life where there H
46 E. 3. 17. is a Meſne eſtate for years, between the Tenant for life and him in the reverſion.

48 E. 3. 16.
50 E. 3. 4.
10 E. 4. 9. Chock. contr. And it appeareth by the Regiſter that the Writ of waſt ſhall be maintainable, although Meſne in the remainder for term of life be between the Tenant for life and him in the reverſion.

43 E. 3. 22. Belk. Where a Leaſe is made unto the Husband and Wife for I
2 H. 4. 3. Old. Na. life or years, there the Wife ſhall not be puniſhed after the
Bre. 36. death of her Husband, for waſt done by the Husband, *M* 3. *E.* 3.

4 E. 3. *Waſt.* 22. contr. The Tenant may cut trees to mend houſes, *&c.* and to do K
7 H. 6. 38 ac. reparations. But if houſes decay by the default of the Tenant, To cut trees to amend them, is waſt.

40 Aſſ. 22. Where waſt is done by the Kings enemies, or by Tem- L peſt, the Tenant ſhall not be puniſhed for the ſame.

20 E. 3. *Waſt.* 32. Cutting of dead wood is not waſt. And if a man cut wood M to burn, where he hath ſufficient dead wood, it is waſt.

2 H. 6. 11. Alſo it is not waſt to ſuffer Lands to lie freſh and not to manure them, and to ſuffer them to grow full of thorns, *&c.*

7 *H.* 6. 38. Alſo it is not waſt to fell ſeaſonable wood which is uſed to
40 E. 3. 25. be felled every twenty years, or within that time.

9 H. 6. 66.
22 H. 6. 12. If a man fell the trees it is waſt, and if he ſuffer the Germines upon the roots of the trees to be again newly deſtroyed, the ſame is a new waſt.

20 *H.* 6. 1. And if a man do not repair the Banks, by reaſon whereof N the Land is drowned, the ſame is waſt.

15 H. 3. *Waſt* 13 1. 20. H. 6. 1. And if a man plow Meadow, *&c.* it is waſt: A wall or pale which is covered with Thabe or Timber may be waſt, if the Tenant ſuffer them to be uncovered, by reaſon whereof,

22 H. 6. 24.
16 H. 7. ac. *&c.* And the digging of Gravel or Stone, or Coals, ſhall be ſaid waſt.

Houſebote, Heybote, and Firebote, do appertain unto a Termor of Common Right, and he may take wood for the ſame, *H.* 21. *H.* 6.

See 57 E. A Biſhop, nor a Maſter of an Hoſpital, nor a Parſon ſhall O puniſh waſt done in the time of their predeceſſors. But an Abbot or Prior ſhall.

Tenant in tail after poſſibility of iſſue extinct ſhall not P be puniſhed for waſt.

[60] Cutting down Willows in the ſight of the Mannor is ad- A judged waſt, *P.* 40. *E.* 3.

Leſſee

B Leſſee for life, the remainder in tail, the remainder in Fee unto the Leſſee for life, if he do commit waſt, he ſhall be puniſhed by him in the remainder in tayl, and yet the Leſſee for life hath the remainder in Fee ſ but there is a meſne eſtate of Inheritance, *&c.* 50 *E.* 3. 3.

C If a man cut trees of the value of 3ˢ.--4ᵈ, it hath been adjudged waſt. 14 *H.* 4. 11. 38 E. 3. 7.

D If a man maketh a Leaſe for one year, or half a year, and the Tenant do waſt, the Leſſor ſhall have waſt, and the Writ ſhall ſay *quas tenet ad terminum annorum*, and in the Court he ſhall ſhew the ſpecial matter. Graunge to the value of 40 s. waſted, and yet no waſt ſay they.

E A Termor may cut the under-wood, growing under the great woods and tall woods. But if there be not any tall wood, then he cannot cut the wood, *P.* 41. *E.* 3.

F And a man may have an Action of waſt, and Covert upon divers Leaſes. *M.* 44. *E.* 3.

G The Gardian ſhall not be puniſhed for waſt done by a ſtranger, *&c.* But a Termor ſhall, *&c.*

H If Tenant in tail leaſeth the Lands for his own life, he ſhall have an Action of waſt againſt the Tenant, if waſt be done.

I The grantee by fine of the reverſion ſhall not have a Writ of waſt againſt the Tenant before the Tenant attorn. But if a reverſion eſcheat unto the Lord, he ſhall have waſt againſt the Tenant without attornment. Lit. 131.

And ſo if the King grant the reverſion by Letters Patents, the grantee ſhall have waſt without attornment. 34 H. 6. 51. 6 E. 3. 17. Attorn. 13.

And ſo if a man diviſeth the reverſion unto another in Fee, upon waſt done, The deviſee ſhall have waſt without attornment. 12 E. 4. 3.

K And none ſhall have an Action of waſt but he who hath an eſtate in Fee-ſimple, or in Fee-tail. But a Parſon or Prebendary ſhall have a Writ of waſt upon their Leaſe; yet ſome ſay that they have not the Fee-ſimple in themſelves alone. 10 H. 7. 9.

L And if Tenant for term of life commit waſt, and afterwards alieneth in Fee, yet the Writ of waſt lieth againſt him: Otherwiſe it is if the waſt be done after the alienation made, as is ſaid: *tamen quære.* 45 E. 3. 9. Thorp. ac.

M If an Abbot committeth waſt in Land which he hath in Ward, and dieth, the Succeſſor ſhall not be charged. But if he be depoſed, the ſucceſſor ſhall be charged, *M.* 49. *E.* 3. 3 H. 7. 11. & 5 H. 7. 24. for the reaſon of the Caſe.

21 H. 6. 3. 22 H. 6. 2.

A Writ of waſt ſhall be maintainable againſt one upon N a Leaſe made unto him until he be promoted unto a Benefice, and the Writ ſhall ſuppoſe *quod teneat ad terminum vitæ.* And ſo of a Leaſe made to endure from ſuch a Feaſt unto ſuch a Feaſt, the Writ ſhall ſuppoſe *quod teneat ad terminum annorum* in that caſe, and by the Court the ſpecial matter ſhall be ſhewed.

Deſtruction of Villeynes by Tillage, adjudged waſt. O

Waſt done by a Gardian unto the value of 20, was ad- P judged waſt, and the plaintiff recovered. *H.* 34. *E.* 3.

40 Aſſ. 22. *Waſt* 24. by Knovit, a houſe which was newly built and not covered was abated by the Gardian, and no waſt. *But* if a frame which was once covered be diſcovered in the life of the Leſſor, If the leſſee do eraſe it after his death, the heir ſhall have waſt. 45 E. 3. 3. ac.

The Termor is not bound for to repair the houſes which Q are ruinous at the time of the Leaſe made unto him.

If two Coparceners Leaſe Lands for life, and waſt is com- R mitted, and afterwards one of them dieth, the Aunt and the Neece ought to joyn in an Action of waſt for the waſt done before, and yet the Neece ſhall not recover any dammages for the ſame, but the place waſted; and it ſeems they ſhall hold the ſame in Coparcenary. *M.* 11. *E.* 3.

If there be two Coparceners, and one hath iſſue and dieth, and her Husband is Tenant by the Curteſie and committeth waſt, his ſon ſhall not have an Action of Waſt againſt him without naming the other Coparcener: but if he bring ſuch Writ it ſhall abate. *qd vide.* 9. *H.* 6. title waſt.

If there be Tenants in common *pro indiviſo*, and one com- S mitteth waſt, the other two ought to joyn in an Action of Waſt againſt the third. See for that, *M.* 3. *E.* 2. waſt.

If the Gardian commit waſt, and the heir being within T age bringeth an Action of Waſt the Gardian thereby ſhall loſe the Wardſhip, and dammages for ſo much as is waſted beſides the value of the Wardſhip which is loſt. But if the heir at full age, do bring a Writ of waſt againſt him who was Gardian, and recover. Then he ſhall recover treble dammages againſt the Gardian, becauſe the ſame is out of the Statute of *Glouceſter*, which ſaith, That the Gardian ſhall loſe the Wardſhip, for he cannot loſe the Wardſhip there, and therefore he is not in that caſe as Tenant in Dower, or by the Courteſie are, who were puniſhable in waſte by the Common Law. *qd. vide. M.* 12. *H.* 4. 3. in the Title of waſt, the opinion of *Thirning*.

Writ of Eſtrepment.

¶ THere are two manner of Writs of Eſtrepment, One is when a man hath a real Action depending, as a *Formedon*, or a *Dum fuit infra ætatem*, or a Writ of Right, or ſuch action wherein the Demandant ſhall not recover dammages, Then he may ſue this Writ of Eſtrepment againſt the Tenant, Inhibiting him that he do not make waſt, nor ſtrip, pendant the action, and this is properly before Judgement is given for the Demandant.

3 H. 6. 16. Variance from the firſt record, in the recitall of the name, Town or the like, ſhall not abate the *Writ*, becauſe it is Original not Judicial.

And another Writ of Eſtrepment lieth for the Demandant where he hath Judgement to recover ſeiſin of Land, and before Execution ſued by *Haberi facias ſeiſinam*: he may ſue this Writ, that the Tenant do not waſt or ſtrip, and this Writ

3 H. 6. 16.

X doth recite the Recovery and the Judgement, *&c.* And alſo the Demandant may have a Writ of Eſtrepment directed to the Sheriff, Commanding him that he do not ſuffer the Tenant to do waſt or ſtrip.

No age in this *Writ*, for it is in nature of Treſpaſſe, and no proceſs of utlary, for that it is a Preeyre. 14 H. 7. 10. If he def. plead in arreſt de Judgment, Or releaſe be plead after verdict; Or if the Juſtices take advice of their Judgement, the party may have Eſtrepment, by Reade. 21 H. 6. 13. 4 Eliz. Dy. 210.

Y And ſome ſay that this Writ of Eſtrepment doth not lye in ſuch action where the Demandant ſhall recover dammages againſt the Tenant: But it ſeemeth reaſonable that the Demandant have ſuch Writ where he doth recover dammages, as where not: For it may be that the Tenant is not of ability to ſatisfie the Demandant for his dammages. And alſo if the Tenant ſhall be ſuffered to let the houſes to fall to decay, or to pull them down, and to deſtroy the Parks and Chaſes, it ſhould be very inconvenient.

14 H. 7. 7. [61]

A And in every reall Action, the demandant may have a Writ unto the Sheriff, commanding him, that he ſee that the Statute which ordeyneth the Eſtrepment be obſerved, and that he do not ſuffer the Tenant to do ſuch ſtripp: and by the like reaſon he may have the Writ againſt the Tenant, where he may receive damages, *&c.*

28 H. 6. 8. qu. 22 E. 3. 2. Eſtrepment 9. Eſtrepment brought againſt the def. and a ſtranger to the recovery

B And if the Tenant do make a Feoffment hanging the plea, the demandant may have a Writ of Eſtrepment againſt the Tenant, and againſt his Feoffee, *&c.* and by the ſame reaſon it ſeemeth that he may have a Writ of Eſtrepment

againſt the Tenant, and thoſe who are his ſervants, naming their Names, &c. although they have nothing in the Tenancy.

In an Aſſiſe, and in every reall Action where the demandant ſhall recover damages, he may have a Writ of Eſtrepment for ſtripp made after the Judgement, and before Execution, But for Corn cut and carried away after Judgment and before Execution ſued forth by the demandant, the demandant ſhall not have a Writ of Eſtrepment: *Quære* What remedy he ſhall have. It ſeemeth none: For the Tenant may take the profits of the Lands before Execution, as I think. For it ſhall not be ſaid Eſtrepment, if not that the Tenant do ſuch a thing which ſhall be ſaid waſt if a Termer had done it. C

34 E. 3. Eſtrepment 15. 15 Eliz. Dy. 325.

And when a man purchaſeth his orignal Writ directed to the Sheriff, then may he purchaſe his Writ of Eſtrepment againſt the Tenant if he will; or a Writ unto the Sheriff, commanding him to ſee that the Statute which ordeyneth the Eſtrepment be obſerved. D

18 H. 8. 5. Note, A man cannot have this writ between the award of the writ and the return, for the Statute giveth it pendent the writ, and it is not pendent till returned. Vid. 12. R. 2. Eſtrepment 6. by Charlton, he ſhall not recover damages for waſt before the Judgment againſt the tenant of the Land.

And if a man ſueth a Writ of Right unto the Lord of a Court Baron, there he may ſue a Writ out of the Chancery directed to the Sheriff, That he ſee that waſt be not done, &c. Or he may ſue a Writ out of the Chancery directed to the party himſelf, commanding him that he ſhall not do waſt, &c. and an Attachment thereupon. And when the Writ is depending in the Common Pleas, then the demandant ſhall have the Writ of Eſtrepment out of the Common Pleas, or out of the Chancery at his election. E

2 H. 6. 13. And the Writ may be directed unto the Sheriff and the party, or he may have ſeverall Writs, one to the Sheriff, and the other to the party. F

And hanging the Action the Tenant may do waſt, and ſhall not be puniſhed, becauſe it is before the prohibition delivered unto him; but only for that waſt done after the prohibition delivered. G

3 H. 6. 16. 12 R. 2. Br. Eſtrepment. 13. they were at iſſue; if it were before the delivery, or after. And if a ſtranger of his own wrong do waſt after the Prohibition delivered unto the Tenant, and againſt the Tenants will, then the tenant ſhall not be puniſhed for that waſt, &c. H

In

I In a *Scire facias* to execute a fine, if the Tenant do commit waſt, the demandant may ſue a Writ of Eſtrepment, *&c.* 33 H. 6. 6. 14 H. 7. 7. 2 H. 6. 15.

K In an Aſſiſe, the Tenant did waſt after verdict and before judgment given, and afterwards the plaintiff had judgment, and afterward ſued a Writ of Eſtrepment againſt the Tenant for the waſt done by him after the verdict, and before judgment: and it was awarded, that the Writ was well brought. *H.* 21. *E.* 3.

L And a Writ of Eſtrepment againſt the Tenant for waſt done after the Judgment and before Execution, was maintainable at the Common Law before the Statute. 33 H. 6. 6. cont' by. ſome.

M And if a Formedon be brought of a Manner, and after the Eſtrepment is brought againſt the Tenant, and afterwards a Tenancy doth acheate unto the Mannor, and the Tenant doth commit waſt in that Mannor, he ſhall be puniſhed for the ſame, and yet it is not demanded by the Writ, but ſureties were demanded by the Writ in the name of the Mannor, and the Land cometh in lieu of the ſervices, *&c.* 15 Eliz. Dy. 325. ac. 4 L. 3. 32 Br. Eſtrepment. 12.

N If a man do recover in a Writ of waſt, he ſhall have a Writ of Eſtrepment againſt the defendant for waſt done after the Judgment and before the Execution. 14 H. 7. 10. Cutler and Keble.

O In Attaint in the Common Pleas, the plaintiff ſhall have the Writ of Eſtrepment againſt the defendant out of the Common Pleas if he will, or out of the Chancery. 21 E. 2. 3. Br. Eſtrepment. 7. Quere. If Juſtices of Aſſize may award this writ.

P If a man ſue a *Juris utrum* againſt ſeveral tenants, as he may, or a *Scire facias* againſt ſeverall Tenants, there he may have an Eſtrepment againſt any of the Tenants, and not againſt them all; and ſo it ſeemeth if a *Formedon* be brought againſt two Tenants joyntly, the demandant may have an Eſtrepment againſt one Tenant only. 34 E. 3. E. ſtrepment 14 5 E 2 E- ſtrepment 11

Joyntienancy at the Original is a good plea; otherwiſe to ſay, Joyntenant at the time of the judgment given. that he was

Q And in a *Juris utrum* ſued in *London*, a man ſhall have a Writ of Eſtrepment directed to the Sheriff of *London*, as appeareth by the Regiſter.

Writ de Partitione facienda.

R THe Writ *de Partitione facienda* is ſuch:

The King, &c. If A. ſhall, &c. ſum' B, &c. to ſhow why, whereas A. and B together and for individed hold three acres with the appurt' of the inheritance which was of I. mother of

the foref. A. *and* B. *whoſe heir they are in* I. *doth the ſame* B. *our partition betwixt them according to Law, and cuſtom of* England *to be made, contradict, and that to do permitteth not, leſſe juſtly as is ſaid, and have there the ſum. and this writ.*

9 H. 5. 15. Quere if privity of Lands intail ſhall have a writ of Partition.

And if the husband hath one part of the Land by purchaſe, and the other parcell in the right of his wife, and another coparcener hath another part as one of the heirs of the common anceſtor; then the husband the wife ſhall have a Writ of Partition againſt the three coparceners, and the Writ ſhall be ſuch:

[62] *The King to the Sheriff, &c. If* I. *and* M. *his wife ſhall. &c. ſum'* M. *&c. to ſhew why, whereas the ſame* I. *and in right of her* M. *of their purparty of the Manner of* T. *which was to* A. *father of the foref.* M. *one of whoſe heirs ſhe is contin', and the ſame* I. *by virtue of a feoffment to him by* E. *daughter, and other heir of the foref.* A. *of the tu̇party of her* F. *of the ſame manner conting made, and the foref.* M. *daughter and third heir of the ſame* A. *togeth' and for individ' hold the foref. Manor with the appurt' the ſame* M. *partition thereupon, &c.*

And there is a Rule in the Regiſter, ſuch, that is to ſay, That *Ao* 12. at *York* was ſealed a Writ *de Partitione facienda* betwixt ſtrangers; and there it was ſaid, That a man ſhould have the ſame in every caſe without *de hæreditate* in the Writ; and it's there ſaid, That that Writ was never ſeen before.

And if a man will ſue a Writ of Partition for Lands in *London*, Then he ſhall have a Writ unto the Major and Sheriffs of *London* in the nature of an *Audita querela*, and the Writ ſhall be ſuch:

The King to the Major and Sher. of London *greeting; of part of* S. *of* H. *and* I. *his wife to us is ſhewn, that whereas they* R. *and* S *together, and for individed hold one Meſſuage with the appurt' in* London, *the ſame* R. *partition thereof according to Law and cuſtom of the ſame City to be made doth contradict, and that to be permitteth not, to the no ſmall damage and grievance of them* S. *and* I. *of right and allowed. You therefore we command, that hearing the plaint of them* S. *and* I. *in this part, and calling before you* R. *and hearing thereupon the reaſons of the part to the ſame* S. *and* I. *in the premiſſes farther to be done you cauſe what of right, and according to cuſtom of the City foref. ſhall be to be done and hitherto in ſuch caſe to be done hath been accuſtomed. Witneſſ. &c.*

And by that it appeareth, That by the Cuſtom of *London* one

one Joynt-tenant, or Tenant in Common shall have a Writ of Partition against his Companion.

And Partition may be made in the Chancery where one of the Coparceners is in ward to the King. 11 H. 4. 61

D And Partition may be made of an Advowson or of a Reversion, that one shall have the reversion of such Acres, and another shall have the reversion of other Acres, and such Partition may be without deed. 28 H. 6. 2. 9 Ass. 23. 5 E. 4. 9. 4 E. 3. partition. 7

And it appeareth in 3 *E.* 4. That Tenant in common may make Partition by deed. 9 H. 6. 5.

E And Partitions betwixt husbands and wives shall bind the F wives if they be equal; and by Partition made of a manner without speaking of the advowson, the advowson doth remain in common. An Joynt-tenants do make Partition of a Mill without deed, and adjudged good. *Trin* 47. *E.* 3. 19 H. 6. 25. 2 H. 7. 5. ac. 47 E. 3. 24. 3 E. 4. 5. 15 H. 6. 25. that they cannot.

G If one Coparcener doth Lease her part unto another Coparcener for years, yet she shall have a Writ of Partition against her sister during the term of years. 21 E. 4. partition 9.

H After Partition in the Chancery, she which is within age after she cometh of full age, if she have two little, shall have a Writ *de Partitione facienda* against her sister; or a *Scire facias*, upon the Record of the Partition in the Chancery against her Coparcener, which shall be returned into the Chancery, *&c* to shew wherefore new partition or extent shall not be made, *&c*. 21 E. 3. 31. Un partition 10. Thorpe there remedy is only by Scire facias.

I And Partition betwixt Coparceners, That one shall have the occupation of the Land from *Easter* unvill *August*, soly and in severalty to her self, and then that the other shall occupy the Lands solely and severally, from *August* to *Easter*, yearly to them and their heirs, is adjudged a good partition in the time of King *E.* 1. 10 E. 1. partition 21. C. Litt. 4 Hal. 34 Edw. Welden & Bridgwaters case. ac.

K And by the same reason, it seemeth a good partition, If two Coparceners have two Mannors by deicent, and they make partition, that one shall occupy one Mannor one year, and the other the other Manner for that year, and then that he who occupied one Manner one year should occupy the other Mannor for the year following; and so they and their heirs shall change every year, and occupy the Mannor which the other Coparcener did occupy the year before.

And also Coparceners may make partition for term of life, or for years.

M And also partition, That one shall have the Land which

Vide 57. Litt. ac. 20 H. 6. 44.

is entailed, and the other the Fee-simple Land, is a good partition; and the process in this Writ is som' attachment and distress infinite.

Writ de Excommunicato Capiendo.

20 H. 6. 1 not good by his ordinary seal 8 H. 6. 3. The Archdeacon doth certifie, and it is said that that he was Ordinary in the Vacancy, and yet it is doubted whether he be good or no, because the King cannot have benefit to seise temporalities, for that he hath not temporalities as a Bishop hath.

BEfore this Writ shall be granted, the contumacy and contempt made by the Party unto holy Church, ought to be certified into the Chancery by the Bishop, by Letters under his Seal. But this Certificate by Letters may be made into the Chancery by a Bishop elect before he be Consecrated: And also the same may be certified by Letters of the Chancellor or Vicar general when the Bishop is beyond the Seas, or out of his Diocess in *remotis agendis*, &c. And although that the Bishop be in his Diocess, yet the Certificate of the Vicar general by his Letters unto the Chancery, reciting that the Bishop is in *remotis agendis*, is good, and shall not be traversed. And in time of Vacation of the Bishoprick, the Certificate ought to be made by the Gardians of the Spiritualities for the time being, or by the Archbishop, &c. if he be Gardian of the Spiritualities. N

And upon this Writ he shall have an *Alias* and a *Pluries*, O and if they are not answered, an attachment against the Sheriff, directed unto the Coroners, returnable in the Kings Bench.

[63]

And if he who excommunicated hath made satisfaction A unto the Church for his Contumacy and Contempt, &c. Then the Bishop or Vicar general, or the Guardian of the Spiritualities, &c. as before is said, ought to certifie the King in the Chancery, that the party hath made satisfaction unto the Church for the Contempt, &c. and thereupon he shall have such Writ to the Sheriff, *viz.*

The King to the Sheriff of Linc. *greet. Whereas* S. *and* J. *whom at the denouncing of the Dean and Chaps. of the Church of blessed* Peter *of York, the Sea being vacant. Or thus At the denouncing of the venerable Father* A. *Bishop of* Winch. *as Excommunicate, and the Keys contemning, in their bodies, according to the custom of England by thee to be justified we have commanded, until to holy Church as well of the contempt as injury to it done by them shall be satisfied, and now from the Dean and Chapter. Or thus, From him the Bishop the benefit of absolution in form, they have merited to obtain, as the same Dean and Chaps. Or thus,*

At the

As the ſame Biſhop by his Letters Patents to us have or hath ſignified. We command thee that them S. *and* J. *from the priſon in which they are detained, if upon that occaſion and no other they be detained in the ſame, without delay to be delivered you cauſe, &c.*

B And if the Sheriff will not execute that Writ, he ſhall have an *Alias* and a *Pluries*, and attachment againſt the Sheriff directed unto the Coroners returnable unto the Kings Bench.

C And if the party excommunicated who is ſo taken, and in priſon, offer ſufficient caution or ſurety, to abide the Ordinances and Rules of the holy Church, and the Judges there, and the Ordinary doth refuſe for to take ſuch caution or ſurety, Then he may have another Writ unto the Biſhop to admit of his caution, and the Writ is ſuch.

Writ de Cautione admittenda.

THe King to the Venerable, &c. *of the part of* A. *Whereas at your denouncing as excommunicate and the Keys of the Church contemning, by his body according to cuſtom of Engl. by one Sher. of* Linc. *&c. to be juſtified we commanded, untill to holy Church,* &c. *it were ſatisfied; to us is ſhown, that though the ſame* A *frequently offered fit caution of obeying the mandats of the Church in form of right, that by this benefit of abſolution he might gain, you nevertheleſſe ſuch caution from him to admit hitherto have refuſed, which we wonder at: and becauſe we will not that the ſame* A. *longer in priſon againſt juſtice be detained, we command you that taking from the foreſ.* A. *the caution foreſ. him* A. *from the priſon in which by occaſion of the premiſes he is detained to be delivered you command, elſe what ours is in this part we will execute,* &c.

D And if the Biſhop will not ſend unto the Sheriff to deliver the perſon ſo excommunicated, then he ſhall have ſuch a Writ out of the Chancery for to deliver him.

The King to the Sher. &c. *of the part of* A *who at the denouncing of the venerable,* &c. and rehearſe the Writ ſent before unto the Biſhop for deliverance of the priſoner *&c. And becauſe we will not that the ſame* A. *longer in priſon againſt juſtice be detained; we command thee that in thy proper perſon thou go to the foreſaid Biſh. and of our part move and efficaciouſly declare that taking from the ſame* A. *the caution foreſ. him* A. *from the priſon foreſ. he command to be delivered, and if the ſame Biſhop or Gaoler in thy ſenſe that will not do, then him* A. *from the priſon foreſ. if upon that occaſion, and no other he be detained in the ſame, to be delivered cauſe, witneſs,* &c.

And

And upon this Writ he ſhall have an *Aliat* and a *Pluries* E unto the *Sheriff*, and if he do not ſerve the Writs he ſhall have attachment againſt the *Sheriff*, but ſo ſhall he not have againſt the Biſhop *&c.*

And if the Biſhop do certifie by his Letters into the Chan- F cery, that he hath ſent unto his Officer, or Archdeacon to abſolve the party excommunicate, then the party ſhall have a Writ unto the Sheriff rehearſing thoſe Letters *&c. We command you that the ſaref.* A. *when it can appear to you, him from his excommunication ſaref. by the ſaref. &c. or Archdeacon to be abſolved, from the priſon in which he is detained, if upon that occaſion and no other he be detained in the ſame, to be delivered thou cauſe, Witneſſ.* &c. And upon that Writ he ſhall have an *Alias*, *Pluries* and attachment againſt the *Sheriff* if he do not ſerve the Writ.

And yet it ſeems that the Officer or Archdeacon to whom G the Biſhop hath ſent his Letters to abſolve the party is not bound to certifie the *Sheriff* that he hath ſuch Letters: But the *Sheriff* ought to go or ſend unto them to know the truth thereof, and thereupon to deliver the party; and the Biſhop, or he who excommunicated him, and upon whoſe certificate the party was taken, may command the *Sheriff* to deliver him, as it appeareth by the Writs in the Regiſter.

And if a man be excommunicated, and taken by a *Signifi-* H *cavit*, and after offers Caution unto the Biſhop, to obey the Church and the Biſhop do refuſe, for which he ſueth a Writ to the *Sheriff* to go unto the Biſhop, and to warn him to take Caution, *&c.* Now if the Biſhop think in his conſcience, or ſtandeth in doubt whether the *Sheriff* will deliver him by that Writ, The Biſhop may purchaſe another Writ directed to the *Sheriff* reciting the Caſe, and in the end thereof, *We command you that* A. *from the priſon foref. unleſſe in thy preſence caution by pledges him to the ſame Biſhop of ſaluf. he offer, by no means deliver without our command, or of him the Biſhop in this part ſpecial witneſſe*, &c.

And if the Biſhop do take Caution of the party to obey A holy Church, Then the Biſhop may certifie the ſame into the Chancery, and thereupon the party ſhall have a Writ unto the Sheriff for to deliver him.

And if the Sheriff do deliver ſuch perſons excommunicate B without order of Law, Then upon complaint of the Biſhop into the Chancery, he ſhall have a new Writ unto the New

Sheriff,

Sheriff, rehearſing the matter, commanding him to take the ſaid perſon and to detain him in priſon, and alſo in the ſame Writ he ſhall command the Sheriff to make the old Sheriff to anſwer the King in his Bench for the contempt: And if the Sheriff who ſetteth the party at large be yet Sheriff, then it ſeemeth the Writ ſhall be awarded unto the Coroners to apprehend the party excommunicated, and to cauſe the Sheriff to appear, *&c.* as before is ſaid.

C And if a man be excommunicated before the Chancellor of *Oxford* &c. and the Chancellor doth certifie this excommunication into the Chancery, *&c.* upon the ſame certificate the King ſhall award a *ſignificavit* unto the Sheriff, to apprehend the party, and the Writ ſhall be ſuch; *Whereas of our ſpecial grace we have granted, that the Chancell. of the Univerſity of* Oxford, *who for the time ſhall be, by his Letters Patents to our chancell. of* Engl. *for the time being, ſignifie may, and certifie the names of every of the Juriſdiction of the foreſ. Chancell. of* Oxf. *who in the bond of the greater excommunication are tried, and that the ſaid our Chancell. who for the time ſhall be, our Writ to be made, and our great ſeal to be ſigned may cauſe, for the taking of them, who thus by the ſaid Chanc. of* Oxf. *ſhall be excommunicated, and by fourty daies perſevere in the ſame, at the ſignific. or certificate of him the Chanc. of* Oxf. *aboveſ. as in our Letters Patents thereupon made, more fully is contained, and* John E. *Cancell. of the Univerſity foreſ. &c. by his Letters, &c. that* W. *of* B, *&c. of his Juriſdiction for his, &c.* as in the Writ. And *quare* if the Univerſity of *Cambridge* have ſuch privilege; it ſeemeth they have.

D If a man be ſued in the Spirituall Court, and he purchaſe a Prohibition, and deliver the ſame, and notwithſtanding they proceed, for which cauſe the Defendant ſueth an attachment upon the ſame prohibition, and pendant the attachment, the Defendant in the Spirituall Court is excommunicated, and the ſame certified into the Chancery, by reaſon whereof a *ſignificavit* is awarded unto the Sheriff againſt the Defendant for to take him: Now the Defendant may come into the Chancery and ſhew how that he had a Prohibition, and an attachment thereupon againſt the party, and that pendant the attachment he is excommunicated, and the *ſignificavit* awarded to take him. Now upon that he ſhall have a *Superſedeas* directed unto the ſame Sheriff, reciting all the matter, commanding him not to take him, and if he do 3 H. 4. 3.

take

take him for the occasion aforesaid, that he deliver him *donec placitum dicti attachment fuerit discuss.* &c. and this Writ shall issue out of the Chancery, if the attachment be not returned into the Kings Bench. But if the attachment be returned into the Kings Bench, then he shall have this Writ of *Supersedeas* out of the Kings Bench, or out of the Chancery at his pleasure. And it ought to appear by the Certificate of the Bishop that he hath been excommunicated by the space of fourty daies before the *significavit* shall be awarded.

And if a man be sued in the Spiritual Court, or the Bishop E
sue, or cite him ex *officio*, and excommunicate him, and certifie the same into the Chancery, and upon the same a *significavit* is awarded unto the Sheriff for to apprehend him, &c. And afterwards the Officiall by his Letters certifie into the Chancery that he hath appealed from that sentence unto the Court of *Rome*, or unto the Court of *Canterbury*, &c. Then upon that certificate he shall have a Writ of *Supersedeas* directed unto the Sheriff, reciting that he hath appealed, commanding him not to apprehend him *pendente appellationis negotio supradict.* Or thus, *of appeale untill with our Councel we shall take some other order, or to such a day.* Or thus, To surcease, &c. and if he hath appealended him, *ex occasione, tunc ipsum à prisona predict' qua,* &c. *deliberari facit,* &c.

And after the *significavit* awarded against the party, if he bring the Popes Bulls into the Chancery, testifying that he hath appealed from that sentence, &c. he shall thereupon have a *Supersedeas* unto the Sheriff, and in the *Supersedeas* as behoveth, not to make mention of the Popes Buls, but to say *quod sicut per instrumenta publica,* &c. And he ought to prove his diligence in suing his appeal by witnesses, or by oath, and within the year of the time of his appeal sued; And the rule in the Register is, *Writs of Supersedeas hanging appeals ought not to be,* if it do not appear upon Record in the Chancery, that the *significavit* is granted, and passed, &c.

And this Writ of *significavit* doth not lye but where a man F
is excommunicated by a special name, and in a special suit against him by the Ordinary ex *Officio*, or by the party, for that is called *Sententia majoris Excommunicationis*; and upon certificat thereof in the Chancery doth the Writ lye. But where he is not especially excommunicated by name, &c. although that the Bishop certifie that his excommuning is in *Sententia minoris Excommunicationis*, upon that this Writ of *significavit* doth

doth not lye, for they ought to expreſs the cauſe, and ſue againſt him ſpecial in the Certificate.

Upon an Excommengement certified by the Popes Buls, a *ſignificavit* ſhall not be granted.

It a Biſhop certifie an Excommengement into the Chancery made in time of his predeceſſor, and the Contumacy, *&c.* he ſhall have a *ſignificavit* thereupon: But upon the Certificate of the Commiſſary, or Officiall of an excommengement in the Chancery, and of the Contumacy, a *ſignificavit* ſhall not be granted: nor upon the Certificate of an Abbot, who hath ordinary Juriſdiction, of an Excommengement in Chancery, a *ſignificavit* ſhall not be granted. 12 E. 4. 15, 16. 14 H. 4. 14. 4 H. 6. 3. 20 H. 6 1. 7. E. 4. 14. [65]

A If a Biſhop certifie in Chancery, that another Biſhop hath certified him, that the party is excommunicate in his Dioceſs, & ſo hath remained by the ſpace of 40 daies, the ſame certificat is void, and a Significavit ſhall not be granted thereupon.

B If a man be Excommenge in the Spirituall Court, and the Biſhop certifie the ſame in the Chancery, and hath a Writ of Significavit directed unto the Sheriff to apprehend the party, and the defend' do appeal unto the Court of *Rome*, and hath Bulls and Inſtruments exhibited into the Chancery to prove the ſame, then upon theſe Bulls, *&c.* ſhewed in Chancery, he ſhall have a ſpeciall *Scire facias*, rehearſing all the matter directed unto the Sheriff, to warn the party at whoſe ſuit he was excommunicated, to appear in the Chancery at a certain day, to ſhew cauſe why he ought not to ſurceaſe to apprehend the party ſo excommunicated depending the ſame appeal; and alſo commanding the Sheriff to take ſufficient ſureties who will anſwer body for body for him who is ſo excommunicated, to purſue, *&c.* and to do unto the party as the Court ſhall award, and that then he do ſurceaſe to apprehend him; and if the Sheriff return the Writ of *Scire facias*, that he hath warned the party, and hath ſent that Writ unto the Baily of the Liberty, who had given him anſwer, That he warned the party at whoſe ſuit he was ſo excommunicated, to appear in the Chancery at the day given by the Writ, *&c.* Now if the party who was returned warned, doth not come, or appear, then he who was excommunicated ſhall have another Writ unto the Sheriff for to deliver him, *&c.* if he have apprehended him; and if he have not taken him, that he do ſurceaſe for to apprehend him. *&c.*

C And if a man be excommunicated by the Biſhop, and after the

the Vicar generall certifieth the ſame into the Chancery becauſe Biſhop is *in remotis*, for which a *Significavit* is granted, and his liberty by it; and then he who is apprehended by his friends ſheweth in Chancery, How that he hath appealed unto the Court of *Canterbury*, which he followeth with effect: Upon this ſurmiſe he ſhall have a Writ unto the Sheriff who hath the party Excomenge in his cuſtody, commanding him that he warn the Biſhop or the Vicar generall, and him who ſued the proceſs againſt the party Excomenge, to appear at a certain day in the Chancery, to ſhew wherefore the party ſhould not *pendente Appellatione* be delivered, and alſo to cauſe the party Excomenge under ſafe cuſtody to come, and to do as the Court ſhall conſider in the ſaid cauſe.

If the Biſhop do excommunicate a man, and certifieth the ſame into the Chancery, and thereupon a Significavit is awarded, and the party taken thereby: and he ſueth appeal in the Court of *Canterbury* or of *Rome*, &c. and hath a *Scire facias* againſt the Biſhop as aforeſaid, and againſt the party, to anſwer in Chancery, and ſhew cauſe why he ſhould not be deliver'd by which the Biſhop and the party are warned, and appear not, for which cauſe the party is delivered: Now if he who is Excommunicated will ſue any Action in the Common Pleas, or in the Kings Bench, or elſewhere, if he think the other party will plead the Excommunication againſt him in the Common Pleas or elſewhere, then he ſhall have a ſpeciall Writ of *Significavit*, unto the Juſtices of the Court where he ſueth, rehearſing all the matter as aforeſaid, *&c.* commanding him to proceed *ſecundum Legem & conſuetudinem Regni.* D

If the Biſhop certifie into the Chancery an Excommunication made at the ſuit of any one, and thereupon a *Significavit* is awarded, and the party apprehended: now he who is apprehended may by his friends ſhew in the Chancery, that he ſued an appeal from that ſentence in the Court of *Canterbury* with effect; and by *Scire facias* againſt the Biſhop and the party, at whoſe ſuit he was excommunicated, retorned at a certain day into the Chancery, and thereupon he ſhall have a Writ unto the Sheriff rehearſing all the matter, commanding him thereby to warn the Biſhop and the party to be in the Chancery at the day of the return of the Writ, to ſhew what they can wherefore the party ſhall not be delivered; and alſo by the ſame Writ commanding the Sheriff that he take ſufficient ſureties of the party excommunicated to appear in E

the

the Chancery at the ſame day; and to carry him back again into priſon, if the Court at the ſame day ſhall ſo think fit; and in the mean time to let him go at large, by his ſureties, *&c.* And then if at the day of the return of the Writ, the party excommunicated doth not appear, nor his Bail, then ſhall be a new Writ awarded unto the Sheriff to apprehend the party excommunicated again, *&c. donec Sancta Eccleſia tam de contemptu quam de injuriis ab eo factis ſatisfacit.* and alſo to arreſt the Bail, to appear before the King in his Bench at a certain day, *&c. ad ſatisfaciend' tam nobis, quam præfato Epiſcopo*, and him at whoſe ſuit he was excommunicated, and further to do as the Court ſhall award. And if at the day given in Chancery by the Writ of *Scire facias*, the Biſhop, and the party at whoſe ſuit he was excommunicated do appear, and alſo he who was excommunicated, and the matter cannot be determined that day, then day ſhall be given over unto both parties at a certain day at another term, *&c.* and then the party excommunicate ſhall have a ſpeciall *Superſedeas* unto the Sheriff, reheatſing the whole matter, commanding him that he do not apprehend him till that day, *&c.* if he have not other commandment from the King, *&c.*

A There are other Writs in the Regiſter which are called [66]
Writs of *Significavit*, becauſe they ſhall not be granted before that the Biſhop hath made certificate by his Letters under his ſeal of the matter in the Chancery, upon the which the Writs ſhall be ſo granted. And one Writ is, where a man is a Clark convict for felony, and afterwards makes his purgation; now the Biſhop ſhall certifie this purgation into the Chancery by his Letters, *&c.* and thereupon the Clerk convict ſhall have a ſpeciall Writ out of the Chancery directed unto the Sheriff, to reſtore him to his goods and chattels.

The King to the Sher' of Lincoln' greeting. Whereas C. of P. Parſon of the Church of R. lately of the raviſhment of the wife of N. and aſportation of his goods, before our beloved and truſty W. and his Companions our Juſtices, as the manner is, to the ſame Biſhop, declared, there his innocency concerning this crime before the ſame Ordinary hath purged, as the ſame Biſhop by his Letters Patents to us hath ſignified. We command thee that to the ſame C. his Lands, goods and chattels by thee into our hand ly occaſion of the premiſes taken, unleſs ſuight be made to thee reaſon, without delay thou reſtore of our grace ſpecial. Witneſs, &c.

And the like Writ for the heir of the Clark, after his death

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to deliver the Lands unto him, *&c.* and in the end of the Writ are theſe words, *ſine dilatione, de gratia noſtra ſpeciali*; by which it ſeemeth that theſe words *de gratia noſtra ſpeciali*, are not neceſſary words, but words of form for the Kings honour, and that the King of right ought to make ſuch reſtitution.

V. 4 E. Dy. 215. Stamf. 108.

And if a man do demand his Clergy before the Juſtices, B and reads as a Clark, and the Ordinary is demanded and cometh not, for which the Juſtices command the Clark to goal again *&c.* Now at the ſuit of the Ordinary or of his Vicar generall, unto the King or his Chancellor, he ſhall have a Writ out of the Chancery, directed to the Juſtices of goale-delivery, reciting the matter, commanding them that they ſend unto the goaler, to deliver him unto the Ordinary.

And if a man be taken out of a Church, or out of San- C ctuary againſt his will, now if the Biſhop certifie the matter by his Letters Patents under his Seal into the Chancery, &c. deſiring reſtitution; then the King ſhall ſend his Writ unto the Juſtices of Goal-delivery, reciting the matter, commanding them to bring back the party to the place from whence he was taken.

If an Abbot, or a Prior certifie by his Letters under his D ſeal, that his Monk, Fryer, Channon, is vagrant out of his Order, *&c.* in the country: then upon that Certificate he ſhall have a Writ unto the Sheriff, to arreſt and apprehend him, and to deliver him unto his Abbot or Prior, *&c.* or to their Attorney, to chaſtiſe him according to the rule of his Order, *&c.*

Writ de Homine replegiando.

IN divers Caſes a man ſhall not have this Writ, although E he be taken and detained in priſon; As if a man be apprehended for the death of a man, or be taken by the Kings command, or if a man be apprehended by the command of the Chief Juſtice, as it appeareth by the Regiſter. But the Statute of *Weſt* 1. is, that he ſhall not be replevisable if he be taken by the command of the Juſtices, and doth not ſay of the Chief Juſtice.

And alſo if a man be taken by the command of the Juſtices of the Forreſt, or men that be outlawed, or if a man abjure the Realm, or if a man be approver, or if a man be taken

for

for felony where the man is, or thoſe who break the Kings priſon, or thoſe who are common and known Theeves, or thoſe who are appealed by Approver ſo long as the approvers life, if they be not of good fame, or for burning of houſes felloniouſly, or thoſe who counterfeit the Kings money, or the Kings Seal, or thoſe who are taken by Certificat of the Biſhop by a Writ *de Excommunicato Capiendo*, or thoſe who are apprehended for Treaſon, or thoſe who are convict by a Writ of *Redditſeiſin*, &c. all theſe perſons are not baylable by this common Writ *de homine replegiando*. But firſt they ought to make their fines, or agree with the King, and thereupon to have a ſpeciall Writ to the Juſtices, or thoſe who do keep them in priſon, reciting how they have been fined, commanding them for to deliver them.

F And if two or three men be taken and impriſoned, they may ſue a joynt Writ *de homine replegiando*. And yet *H.* 8. *b.* 4. 31. ſuch a Writ ſued by two was abated; but yet it ſeems the Law is they may ſue joyntly, and the Writ ſhall be ſuch: 8 H. 4. 21. but 8 H. 4. 16. cont. See 7 8. D. & 9. H. 4. 2.

The King to the Sher' of Linc', &c. We command thee that juſtly and without delay to be replev' thou cauſe B ⊂ *and* D, *whom thy ſelf didſt take, and taken doſt hold, as is ſaid, or whom* D *and* E *took, and taken hold, as is ſaid, unleſs taken they were by our ſpeciall preceps, or of our Chief Juſtice, or for the death of men, or for our forreſt, or any other right, wherefore according to the cuſtom of Engl. they are not replevis. that no more a clamour therefore we hear for defect of juſtice. Witneſſe, &c.*

And upon that he ſhall have an *Alias* and a *Pluries*, and Attachment if need be. But if he who apprehendeth the man do claim him as his villain, and the ſame is returned by the Sheriff upon the *Alias* or the *Pluries*, then the plaintiff ſhall have another Writ of *Pluries* to the Sheriff thus:

The King to the Sher' &c. Whereas thee many times we commanded that juſtly, &c. whom H *took, and taken holdeth as is ſaid, unles he had been taken, &c. be not repleviſable, or to us that thou ſhould ſignifie the cauſe, wherefore, &c. and thou to us didſt return, that thou didſt go to the Mannor of* H. *to replev' there the foreſ* W *accord. to the tenor of our Mandate foreſ. But the foreſ.* H *delivery of the body of him* W *to be permitted not. becauſe he affirmeth him* W *to be his villein, and fugitive of the Mannor foreſ. claiming right of villeinage and ſervitude, in the perſon of him* W. *within the Dominion of his Mannor, &c. We knowing that the foreſ.* W *if a free man he be, by ſuch taking and claim,* [67]

loſes the Common Law. Command thee that if the foreſ. W ſhall finde thee ſuffic. caution, &c. to be before us from the day of St Mic. to 15 dayes, &c. to anſwer the foreſ. H. if, &c. then him W in the mean time to be repl. thou cauſe according to the tenor of our command, &c. and nevertheleſſe if the foreſ. W ſhall ſecure thee his clamour, &c. then put by ſureties, &c. the foreſ. H, that he be before us at the day foreſ. to the foreſ. W, &c. of the taking, and claim foreſ. to anſwer, and have there the names of the pledg and this Writ, &c. And in the ſame manner it ſhall be done in a *Homine replegiando*, if the def. claim the plaintiff as his ward, then upon that returned at the *Pluries* by the Sheriff, the plaintiff ſhall have a ſpeciall Writ as aforeſaid, reciting that he holdeth the ſame Land of the def. by Socage, and not by Knights-ſervice: commanding the Sheriff for to deliver him, and to admit the def. by pledges to appear at a certain day as afore is ſaid, to anſwer unto the plaintiff, &c.

And if a man be taken within the Cinqueports, then he A ſhall have a writ of *Homine replegiando* directed unto the Conſtable of *Dover*; and unto the Warden of the Cinqueports, or his Lieutenant, in the nature of an *Audita querela*, and the Writ ſhall be;

The King to our beloved, &c. Conſtable of his Caſtle of Dover and Ward of his Cinqueports, or his Lieutenant greeting. We command you that hearing the plaint of A, whom B took, and within the liberty of the Ports foreſ. taken holds as is ſaid, and calling before you the parties foreſ. and hearing ſeverally their reaſons: him A if accord. to Law and cuſtom of the Ports foreſ. be be repleviſable. to be replev. thereupon cauſe him, unleſſe he be taken by our ſpecial Precept or of our Chief Juſtice. &c. that we may not farther thereof a clamour hear for want of juſtice, &c.

And if a man be taken by the Officers of the Forreſt, then he ſhall have a Writ *de Homine replegiando* unto the Keeper of the Forreſt, in ſuch form. *viz.*

The King to his beloved and truſty W. of B, his Forreſts on this ſide Trent. or to his Lieutenant in the Forreſt of S; we command you that if A and B. taken and detained in the Forreſt of S. for treſp. of Veni'on by them done, as is ſaid, whereupon they are indicted ſhall find you, &c. either of them twelve good and legal men of your Bailiw. who them ſhall mainprize to have before our Juſtices next itinerant at the pleas of the Forreſt in the County of N. when into thoſe parts they ſhall come, to ſtand to the right of the treſp. foreſ. then them A and B if accord. to aſſ. of the forreſt

replevi-

repleviſable they ſhall be the foreſt twelve, in the mean time deliver thou to bail, and have there the names of thoſe twelve men, and this Writ. Witneſſe &c.

B And if the Warden, will not bayl him, he ſhall have an *Alias* and *Pluries* againſt the Warden, directed unto the Sheriff to attach him to anſwer before the King in his Bench, and to ſhew wherefore he hath not replieved him, &c. And in the ſame Writ it ſhall be contained, That he call to him the verderors, to deliver him who is ſo taken in the preſence of the verderors by good bayl, and that the Sheriff do deliver the names of the bayl unto the ſame verderors, to anſwer be-
C fore the Juſtices in the next Eyre. And no man ſhall be taken, nor impriſoned for vert, or veniſon, if he be not found in the manner, or indicted, in which caſe he ſhall be ſet to bayl by the Warden *ex officio*, or otherwiſe by Writ as is aforeſaid, &c.

D For hunting in the Kings Chaſes, or in the Chaſes of other men, he ought to be ſued at the common Law, and for the ſame a man ſhall not be taken and impriſoned untill he be convicted at the common Law in an Action there brought againſt him. But for hunting in Parks, &c. the party ſhall have an action within the year and day upon the Statute of *Weſt.* 1. *cap.* 20. But after the year and day, the King ſhall have the ſuit.

E And if a man hath any Park within the bounds of any Forreſt, which Park is not incloſed according unto the Aſſiſe of the Forreſt, &c. then it ſhall be ſeiſed into the Kings hands, and then the party ſhall have a ſpeciall Writ of *Replevin*, to replevie a Park out of the Kings hands: and the Writ is ſuch:

The King to his beloved and truſty W B. *Warden, or his Lieutenant in the forreſt of* S. *greeting: We command you, that the Park of* A. *of* B. *and* I, *which is within the meres of our forreſt foreſ. and which becauſe it is not incloſed accord. to aſſiſe of the forreſt, is taken as is ſaid into our hand; If accord. to aſſiſe of the forreſt repleviſable it be to the ſame A till the coming of the Juſtices of the Pleas of the forreſt into the County foreſ. to be replev. cauſe. Witneſſe*, &c.

F In a *Homine Replegiando*, the def. claims the plaint. for his villeyn, and the plaintiff pleads that he is free, and ſaith that the defendant hath taken his goods, and prayes that he may gage deliverance, &c. for which the def. doth gage deliverance. But the plaintiff ſhall not finde ſureties, that he

5 *H.* 7. 31
13 *H.* 7. 17. but the better opinion, that it is in the Judges diſcretion.

But 6 E. 4 8. & 12 E 4. 4. that he ſhal not finde ſurety.

ſhall redeliver the goods, &c. if he be found villein. *qd. vide M.* 6. *E.* 4 8.

But in a *Homine Replegiando*, if the def. claim the plaint. G as his villeyne, the plantiff ought to finde ſureties to deliver his body to the def. if he be found his villeyn. *qd. vide P.* 31. *E.* 3.

[68]

In a *Homine Repleg.* the plantiff was bound in a Recogni- A zance in a certain ſumme of Money unto the defendants uſe, that de would ſue him *cum effectu*, and if the Writ be abated for any cauſe, yet he ought to ſue another Writ for this taking, &c. otherwiſe he ſhall forefeit that Recogniſance, as it appeareth, *H.* 8. *b.* 4.

If a man ſue a *Homine Repleg.* and the def. claim the plaint. B for his villeyn, if the Sheriff return the ſame upon the *Alias*, or upon the *Pluries* in the Kings Bench or Common pleas where the Writ is returnable, then upon ſureties found in Court where the Writ is returned by the plantiff to yeeld his body, *&c.* he ſhall have a ſpeciall Writ unto the Sheriff for to deliver the plaint. out of priſon, *&c.* But by the Regiſter he ſhall have a ſpecial Writ unto the Sheriff to take ſureties of the plantiff, and to ſue with effect, and to yield his body, if, &c. But the uſage at this day is, that he finde ſureties in Court, &c. and not to award a Writ unto the Sheriff to take ſureties. *qued vide M* 8. *b* 4. 3.

And in a *Homine Repleg.* if the Sheriff return that the def. C hath eſſoyned the plaint. body, ſo that he cannot deliver him, then the plantiff ſhall have a *Capias in Withernam* to take the defendants body and to keep the ſame *quouſq*; &c. whether he be a Peer of the Realm or other common perſon. And if the Sheriff return *non eſt inventus* in this *Capias in Withernam* of the body, then the plantiff ſhall have a *Capias in Withernam* againſt the def. goods, &c. *qd. vide M.* 11. *b.* 4. in title of *Withernam.*

Writ de Replegiare de averiis.

IF a man take more live Cattell then one beaſt, then the Writ is ſuch:

The King. &c. *We command thee that juſtly and without de-* D *lay, to be replevied thou cauſe to* B *his beaſts, which* D *took and unjuſtly, detaineth as is ſaid, and after him thereof juſtly to be deduced cauſe thou, that no more thereupon a clamour we may hear for defect of juſtice.*

And

And if he take but one live beaſt, then the Writ ſhall be: *The King*, &c. *We command thee that to be replev. thou cauſe to* B. *a certain his Horſe, or a certain his Mare, or his Oxe*, &c.

And if a man take a dead Chattell, then the Writ ſhall be: *The King*, &c. *We command thee that to be replea. thou cauſe to* B. *his goods and chattels.* And in the Court he ought to declare of divers things: But if he take but one thing which is a dead Chattell, then the Writ ſhall be:

E *The King*, &c. *we command thee*, &c. *that to be replev. thou cauſe to* B. *a certein Nat, or a certein ſwarm of his bees, or a certein iron of his Mill.* And if the Sheriff doth nothing upon this Writ, then he ſhall have an *Alias repleg. fac.* &c. and in the ſame Writ he may have this clauſe; *or the cauſe to us ſignifie, why our command another time to thee thereupon directed execute thou wouldeſt not, or couldeſt not*, &c. And then this Writ ſhall be returned into the Kings Bench or Common Pleas: And if he do not ſerve this Writ, then he ſhall have a *Pluries* returnable into the Kings Bench or into the Common Pleas: And in the *Pluries* is alwaies this clauſe; *vel cauſam nobis ſignifices.* But not in the *Alias repleg.* if not that the party will have it put in the Writ. And the plaintiff may ſue all theſe Writs forth together, *viz.* the *Replevin*, the *Alias* and the *Pluries*, and deliver them unto the Sheriff all at one time if he ſo ſee good. And if the Sheriff doth not return the *Pluries*, then the plaintiff may have an Attachment againſt the Sheriff, directed unto the Coroners.

F And it appeareth by the Regiſter, That if the Sheriff return upon the *Replevin*, *Sicut Alias* or *Pluries*, that he hath ſent unto the Bayliff of the Franchiſe, &c. who hath given him no anſwer, or that he will not make deliverance. &c. then the plaintiff ſhall have a *Non omittas* unto the Sheriff, that he enter into the Franchiſe and make return, and if the Sheriff doth not do ſo, he ſhall have an *Alias non omittas* directed unto the Sheriff, and afterwards a *Pluries non omittas*, &c. But it ſeemeth that that return, *That I have commanded the Baily of the liberty*, &c. *who no anſwer gave me*; or the return that the Bayliff will not make deliverance of the Cattell, are not good returns. For by the Statute of *Weſt.* 1. *cap.* 17. in the end of the Statute it appeareth, That the Sheriff upon ſuch a return made unto him by his bayliff, ought preſently to enter into the Franchiſe, and to make deliverance of the Cattell taken: and ſo it appeareth the Sheriff may do by the Statute

of *Malbridge, cap.* 21. If a plea of *Withernam* be in the County by plaint before the Sheriff, and the Sheriff ſend unto the Bayly of the Liberty to make deliverance, and the Bayliff doth nothing, that then the Sheriff *ex officio*, may enter into the Liberty without any Writ directed unto him in that Caſe.

And if the Sheriff upon the *Pluries*, return *That the foreſaid* G P. *the beaſts of* A. *foreſ. took, and thoſe hath driven from the Coun. foreſ into the County of* F. *by which to the ſame* A. *to be replev. he cannot*, &c. Or if the Sheriff return that he ſent to the Bayliff of the liberty of *D.* who hath return of Writs, *&c.* who gave him anſwer, That the Cattell are eſſoined into divers liberties, by reaſon whereof he cannot have view of them, nor deliver the Cattell. Or if the Sheriff return that he himſelf cannot have view of the Cattell to deliver them. Or if he return, That after the taking, *&c.* that the defendant hath eſſoyned the Cattell out of his Bayliwick, that he cannot deliver them: Or if the return that the defendant hath eſſoyned them into unknown places, that he cannot have view of them, to deliver them. Or if he Sheriff return that he ſent unto the Bayliff of the liberty, who anſwered him that the defend had impounded the Cattell within the Rectory of the Church of
[69] *C.* for which cauſe he cannot deliver them, &c. Upon theſe Returns made by the Sheriff the Plaintiff ſhall have a Writ of *Withernam* to take as many of the Defendants Cattell, directed unto the Sheriff, and the Writ ſhall be ſuch:

The K. to the Sher. &c. *Whereas many times we have com-* A *manded thee, that juſtly*, &c. *to* A. *his beaſts which* B. &c. *unjuſtly deteineth as is ſaid, or the cauſe to us ſhouldſt ſignifie, why our mandate many times therefore to thee directed, execute thou wouldſt not, our couldſt not, and thou to us haſt ſignified that after the foreſ* B. *the beaſts of the foreſ.* A. *took, and into thy Coun. drove, and from the Coun. foreſ. into the Coun. of* C. *for which thoſe to the ſame* A. *replevy thou couldſt not, we willing the malice of him* B. *to meet with in this part, Command thee, that the beaſts of the foreſ.* B. *in thy Shire without delay thou takeſt in Withernam, and thoſe deteineſt, untill to the ſame* A. *his beaſts foreſ. according to the cuſtom of our Realm replevy thou maieſt, according to the tenor of our mandates foreſ. before to thee.* &c.

And note that in the Writ of *Withernam*, the cauſe which B the Sheriff returned upon the *Pluries*, &c. ought to be put and rehearſed in the Writ of *Withernam* as before is ſaid. And if the

the Sheriff return upon the *Pluries*, that he hath ſent unto the Bailiff of the liberty, and that he anſwer him that the beaſts are eſloyned, *&c.* Then he ſhall have a *Withernam* directed unto the Sheriff, and the Sheriff ſhall ſend his Bayliff into the liberty to ſue the *Withernam*, and if the Bayliff do not execution, nor give anſwer unto the Sheriff unto the precept directed unto him, then the plaintiff ſhall have a *Withernam* directed unto the Sheriff, *with Non omittas, becauſe of any liberty, &c. but that thou enter,* &c. and to take the Cattell in *Withernam*, &c.

C And it appeareth by the Regiſter, If a man ſue a replevin in the County without Writ, and the Bayliff return unto the Sheriff that he cannot have view of the Cattell to deliver them: Then the Sheriff by enqueſt of Office ought for to enquire thereof, and if it be found by the Jury that the Cattell are eſloyned, *&c.* Then the Sheriff in the County Court may award a *Withernam* to take the defendants Cattell. And if the Sheriff will not award a *Withernam*; then the plaintiff ſhall have a Writ out of the Chancery directed unto the Sheriff rehearſing the whole matter, commanding him for to award a *Withernam*, &c. And he may have an *Alias*, and after a *Pluries* and attachment againſt the Sheriff, if he will not execute the Kings command, &c.

D And a man ſhall have a Replevin of divers Cattell that are taken: As if a man take divers Cowes or Sheep, and afterwards they have calves or lambs, the plaintiff ſhall have his Replevin of them all, as well as of the Cowes and Sheep which were taken.

E And the Sheriff upon a complaint made unto him of taking of the Cattell, may command his Bayliff by word for to Replevie them; and the ſame is as well as if the Sheriff had made his Warrant to his Bayliff to have Replevied them; for it may be that the Sheriff nor his Bayliff cannot write, or that they may want ſuch things wherewith they may write a Warrant, &c. Vide 16 H. 7. 14. That a precept to the Bayly by word, is as good as by writing.

F And the Lord ſhall have a Replevin if his Villains Cattels are taken, and yet he had not property in them at the time of the taking, but now by his claim he hath, &c. But it ſeemeth he ſhall not have dammages for the taking of the Cattell, but only for the detaining of them, if the ſame be found for him.

G And if a man take Cattell for dammage feaſant, and the

other tender amends, and he refuſeth it, *&c.* Now if he ſueth a Replevin for the Cattell, he ſhall recover dammages only for the deteining of them, and not for the taking of them, for that the ſame was lawfull.

And if the Lord diſtrein his Tenants Cattell wrongfully, H and afterwards the Cattell return back unto the Tenant, yet the Tenant ſhall have a Replevin againſt the Lord for thoſe Cattell, and ſhall recover dammages for the wrongfull diſtreining of them, becauſe he cannot have an Action of treſpaſs againſt his Lord for that diſtreſſe.

And if a man do diſtrein Cattell in one County, and drive I the Cattell into another County, the party may ſue a Replevin in which of the Counties he will, but not in both the Counties.

And if the Cattell of a feme ſole be taken, and afterwards K ſhe marry a husband, the husband alone may have a Replevin, *qd. vide. Trin.* 33. *E.* 3.

And in a Replevin, If the plaintiff do declare, that the de- L fendant yet hath and deteineth the Cattell, and the defendant doth appear, and afterwards maketh default, the plaintiff ſhall have Judgement to recover all in dammages, as well the value of the Cattell, as dammages for the taking of them, and his coſts. *M.* 8. *H.* 8. *Rott.* 108.

Writ de Pone de remover le Plee.

NOte, That if a Replevin be ſued by Writ out of the M Chancery, Then if the plaintiff or defendant will remove that plaint out of the County into the Common-pleas, or Kings Bench, he ought to ſue a Writ out of the Chancery, which is called a *Pone*, and the Writ ſhall be ſuch:

The K. to the Sher. of Linc. greet. Put at the petition of the plaint. before our Juſtiess at Weſtm. ſuch day the plea which is in thy Coun. by our Writ, betwixt A. *and* B. *of the beaſts of him* A. *taken, and unjuſtly detcined as is ſaid, and ſum. by good ſum.* B. *that then he be there, the forcſ.* A. *therefore to anſwer, and have there the Writ.*

And if the Writ of Pone ſhall be removed into the Kings Bench, then the Writ is ſuch; *The K. &c. put the plea at petition of the plaint. before us wheresoever we ſhall be in* Engl. *&c.*

And this Writ is ſued for the plaintiff without putting any [70] Cauſe in the Writ of the Removement, *&c.*

But if the defendant will remove the Plea in the County A upon

upon a replevin ſued by Writ, them he ought to put an evident Cauſe in the Writ after the teſt. of the Writ, and the form of the Writ is ſuch:

The K. to the Sher. &c. *Put before our Juſtic. at Weſtm. ſuch day the plea which is in thy County by our Writ betwixt* A. *and* B. *of the beaſts of him* A. *taken and unjuſtly deteined, as is ſaid, and ſay to the foreſ.* A. *that he be there that plea againſt the foreſ.* B. *therefore to proſecute if he will, and have there this Writ, and the other Writ. Witneſſe,* &c. *And becauſe the foreſ.* B. *took the beaſts foreſ. in his fee, for cuſtomes and ſervices to him due as is ſaid, Let execution of this Writ be, if the cauſe be true, and the foreſ.* B. *requeſteth this, and otherwiſe not.* And he may ſhew divers other cauſes. *Becauſe the foreſ.* B. *and* C. *took the beaſts foreſ. in the fee of him* B. *for cuſtoms,* &c. *let execution be done,* &c. *as aboveſaid.* Or thus, *Becauſe* A. *Clerk of* D. *Sher. of the Coun. foreſ. who frequently in abſence of the Sher. of that Coun. holdeth pleas of the ſame County, is couſin of the foreſ.* A. *for which the ſame Sher. favoureth him* A. *in the plea foreſ. as is ſaid, let execution be done,* &c.

And he may ſhew any cauſe which induceth any favour, that the Sheriff doth, or is like to do unto the plaintiff. Or thus, *Becauſe the foreſ.* B. *claimeth the foreſ.* A. *to be his Villein, and upon that occaſion affirmeth the foreſ. beaſts to be his proper, for which that plea ought not into the Coun. to be brought, as is ſaid, let execution be done as aboveſ.*

And if a Replevin be ſued by Writ in any other Lords Court then in the Kings Court, then the plaint cannot be removed before the Juſtices by the Plaintiff nor by the defendant, without putting cauſe in the Writ, and the Writ is, *Put at the Petition of the plaint. the plea which is in thy County by our Writ, betwixt* R. *and the Abbot of* W. *and* J. *of a certain horſe of him* R. *taken, and unjuſtly deteined as is ſaid, and ſum by good ſum the foreſ. Abbot, and* J. *that then they be there, the foreſ.* R. *therefore to anſwer, and have there this Writ, and the other Writ. Witneſs,* &c. *Becauſe the foreſ. Abbot is Lord of the Court in* C. *in which the plea hangeth by return of our Writ: wherefore the ſame* R. *in the plea foreſ. in the ſame Court againſt the Abbot and* J. *Juſtice cannot obtain, as is ſaid, let execution be done,* &c.

And if the plea be removed at the ſuit of the plaintiff, then when he hath ſhewed cauſe in the end of the Writ, he ſhall ſay afterwards in the ſame Writ, *Wherefore the ſame plaintiff*

in

in his plea foref. against the foref. B. *in the ſame Court juſtice cannot obtain, as is ſaid.*

And if the plea be removed at the ſuit of the defendant, then after cauſe ſhewed in the Writ it ſhall be ſaid, *Where the ſame Baily favoureth him* A. *in the plea foref. as is ſaid, let execution,* &c. as above is ſaid.

Writ de Recordare.

It appeareth by the Regiſter, 6. & 7. Dr. Cauſe de remover. plee. 36. that by Recordare pleas ſhall be removed extra Durham & Coſtriam: yet theſe are Courts of Record.

WHen the plaint is in the County, and the Replevin ſued there without Writ, then if the plaintiff or defendant will remowe that plaint, he ought to ſue a Writ of Recordare out of the Chancery directed unto the Sheriff, and that Writ ſhall be ſuch:

The King to the Sher. of Linc. *greet. We command them that in thy full court to be recorded thou cauſe the plea which is in the ſame Court without our Writ betwixt* A. *and* B. *of the beaſts of him* A. *taken and injuſtly detcined as is ſaid, and that record have thou before our Juſtices at* Weſtm. *ſuch day,* &c. *under thy ſeal, and the ſeals of four legal Knights of the ſame Court, of thoſe who at that record preſent were, and to the parties the ſame day prefix, that then they be there in that plea as juſt it ſhall be, to proceed, and have there the names of the foref. four Knights, and this Writ. Witneſs.* &c. *Let execution of this Writ be made, if the foref.* A *this requireth, otherwiſe not.*

27 *H.* 6. 3. quere.

And thereby it appeareth that the plaintiff may remove the plaint by Recordare without any cauſe put in the Writ: But the def. cannot remove the plaint by a Recordare, without ſhewing cauſe in the Writ, as before is ſaid upon the Pone. And the Cauſer for the defendant ought to be ſuch; *Becauſe the foref.* B. *in pleading affirmeth, that the foref. beaſts he took in his ſeveral ſoil, as in his dammage there, in which ſoil the foref.* A. *claimeth to have common of paſture as is ſaid, which plea in that it toucheth franketenement as foref. is in the ſame Count. accord. to law and cuſtom of our Realm, without our Writ ought not to be pleaded. Let execution of this Writ be made, if the cauſe be true, and the foref.* A. *this requireth.*

And if a Replevy be ſued by plaint in the Court of any other Lord, then in the County Court before the Sheriff, then the Recordare which is ſued by the plaintiff, or def. ſhall be directed unto the Sheriff, and the Writ ſhall be ſuch: *The K. to the Sher. of* Linc. *greet. We command thee that taking with thee*

thee four diſcreet and legal Knights of thy County in proper perſon thou go to the Court of W. of C. and in that full Court to be recorded thou cauſe the plea which is in the ſame Court, without our Writ, betwixt, &c. and that record have thou under thy ſeal, and under the ſeals of four legall Knights of that Court, at that record preſent, and to the parties, &c. as aboveſaid, becauſe the foreſ. A. is baily of the foreſ. VV. of C. of his Court foreſ. and holdeth the pleas of the ſame Court, and Judge in his own cauſe ought not to be.

Another Recordare thus, *Accedas ad Wapentag. noſtrum de H.* Or thus, *Ad Hundredum noſtrum de F.* Or thus, *Ad Tithingbum noſtrum de L. & in pleno Wapentage illo.* Or thus, *Et in pleno Hundredo illo.* Or thus, *In pleno Tithingo illo*, &c. And he may ſhew other Cauſes as the Caſe requireth. And if the Recordare be returnable in the Common Pleas, and at the day of the Return, the Sheriff return it *tardè*; now the party that ſued that Recordare ſhall have a *ſicut alias Recordare* out of the Common Pleas directed unto the Sheriff, &c.

A And if the plea be diſcontinued in the County, yet the plaintiff or defendant may remove the plaint into the Common Pleas, or Kings Bench by Recordare, &c. and it ſhall be good, and he ſhall declare upon the ſame. And the Court ſhall hold plea upon the ſame plaint; for if the plaint be continued in the County, and iſſue joined upon it, yet nothing ſhall be removed but only the plaint, and in the Common Pleas the plaintiff may declare a new, &c.

B And in a Recordare to remove a record out of ancient demeſne, the VVrit ſhall ſay, *Loquelam & proceſſum*, and not *recordum*; *qd. vi. 39. H. 6.* by all the Juſtices; Yet the form of the Regiſter in the Record, as before is ſaid, is, *Et recordum illud habeas.*

C If a Record be removed out of a Court of Record by a *Recordare facias*, it cometh in without warranty, and the Court ſhall not hold plea thereof. But if a Record cometh in Court without a warrant, the party may ſue a VVrit directed unto the Juſtices that they proceed upon that Record, *quæ coram* D *vobis reſidet.* If the *Recordare facias* beareth date before the plaint were entred in the County, yet the Record is well removed, becauſe that both Courts are Courts of Record. But if the Record be removed out of the Court of any other Lord by ſuch VVrit which beareth date before the entry of the plaint, it is not good.

9 H. 6 58. If a Recordare iſſue to a Court of Record to remove a plea although by that the Record be removed it is void, if it be not to remove Indictments.

[71]

3 H. 6. 10. Br. Cauſe de remover plee 37. 2 H. 7. 5. But if Comſans be delivered, all the Record in bank ſhall be in the Franchiſe, 9 H. 6. 58. Oyer and Terminer, ſhall not be removed by Recordare, by Babington. 1 H 3. 4 ac. V. 5. E. 6. fo. 91. 34 H. 6. 27 Aſhton cont. upon a fine removed, & 22 H. 6. 7.

Recaption.

Recaption.

A Writ of Recaption lieth, where a man diſtreyneth for E
Rent, or ſervice, or other things, and afterwards pendant the plea, he who deſtreyned doth diſtrain again for the ſame rent of ſervice or other thing the beaſts of the party, who he had before diſtreyned upon; Then he who is ſo diſtreyned ſhall have this Writ, and ſhall recover dammages for the ſecond diſtreſs taken, and he who took the diſtreſs ſhall be fined for the wrong, although the firſt diſtreſs were lawfully taken, and although that the rent or ſervices for which he diſtreyneth were arrear, *&c.* becauſe by the firſt diſtreſs he ſhall have return of the things taken untill he hath the Rent or ſervices for which he diſtreyned. But for dammage feaſance in his Lands a man may diſtreyn the beaſts of any man which he findes upon the land there during the dammage, ſo often as he ſhall finde them ſo doing, becauſe he diſtreyneth them every time for a new treſpaſs, and new wrong done in his Land: *tamen Quære.*

47 E. 3. 7. Finchden cont.

And if the Lord diſtreyn for rent or ſervices behinde, and F
afterwards pendant the plea, the Lord doth command his ſervant to diſtreyn for the ſame rent or ſervice, by reaſon whereof the ſervant or bayly do diſtreyn again, the Tenant ſhall have a Writ of Recaption againſt the Lord for the ſame diſtreſs.

And ſo it ſeemeth. If the Lord diſtreyn his Tenant for rent or ſervice, and afterwards the ſervant or bayly do diſtreyn the Tenant again for the ſame rent or ſervice, and the Lord do agree unto that diſtreſs, by joyning in Aid preyer, by the ſervant or baily, the Tenant ſhall have a Writ of Recaption againſt the Lord. But if the Lord diſtreyn for rent or ſervice, and afterwards the Lords baily doth diſtreyn the ſame Tenant for the ſame rent or ſervice, pending the plea, the tenant ſhall not have a Recaption againſt the Lord, nor againſt the baily, although the baily maketh conuſance in the right of the Lord, *&c.* For it may be that the Lord had not notice of that diſtreſs, nor that the baily had not notice of the diſtreſs which the Lord took before for the ſame rent or ſervice.

But it ſeemeth in that Caſe the Tenant may have an A- G
ction of treſpaſſe againſt the baily for the ſecond diſtreſs of his

his Cattell for the same rent or service, for which the Lord had distreyned before.

H But if the Lord do distreyn for rent or services, and afterwards pendant the plea, the Lord do distreyn the Cattell of a stranger for the same rent, and not his Cattell who was first distreyned; he who is so distreyned shall not have a Writ of Recaption, nor he who was first distreyned. For it behoveth him who shall have this Writ of Recaption that he have his Cattell first distreyned before for the same Cause for which they were distreyned the second time.

I But if a man do distreyn two mens Cattell for rent or service, and afterwards he doth distreyn the Cattell of one of them again for the same rent or service, Now he shall have a Recaption alone in his owne name.

K And if the Lord distreyn the beasts of stranger for rent or service, and afterwards pendant the plea, the Lord doth distreyn the beasts of the same stranger for the same rent or service, the stranger shall have a Recaption as well as the Tenant, if the beasts were taken at two severall times.

L And if the Writ of Replevin be abated, then the Writ of Recaption shall abate, as it was adjudged in the time of King E. 1.

M And if the Lord do distreyn for rent arrere at a certain day, his Tenants Cattell, and he sueth a Replevin, &c. And the Lord avow for the rent, &c. and the Tenant plead *Hors de son* Fee; If the Lord pendant that plea distreyn for rent behinde at another day after, the Tenant shall have a Writ of Recaption, because the Lords title shall be tried by the first plea. But otherwise it is, If the Tenant in the first Replevy plead *rein arere*, or levyed by distress, then pendant that plea, the Lord may distreyn for the Rent behind at the day after, because the Seignory is there confessed, and the Tenant [72] shall not have a *Recaption*.

A And the Tenant, or he who is distreyned shall have a *Recaption* before any Avowrarie made, and may aver that he distreyned for the same cause. 47 E. 3. 7.

B And in a *Recaption*, the def. shall not avow as he shall do in a *Replevin*, but shall justifie the taking, &c. as he shall do in an Action of Trespas, for the plaintiff shall recover damages only in the recaption for the contempt that the def. hath done against the Law, and not for the taking of the Cattell, 47 E. 3. 7.

nor

nor for the detayning of them. And in a *Recaption* it is not materiall whether the firſt diſtreſs be of right or not. C

And if a Playnt be removed out of the County into the Common Pleas by *Pone*, or *Recordare*, and afterwards the plaintiff be Nonſuit in the Common-pleas, before or after an avowry made, the Lord after this Nonſuit may diſtreyn again for the ſame cauſe, and the Tenant ſhall not have a *Recaption*, becauſe there is not any plee depending, and yet the plaintiff may ſue a Writ of ſecond Deliverance upon the ſame Record. D

And if the Lord diſtreyn the Cattell of the Tenant and a ſtranger which they have in common for rent or ſervice, and afterwards pendant the plee the Lord doth diſtreyn the Tenants Cattell only for the ſame cauſe; the Tenant ſhall have a *Recaption* for thoſe Cattell. But if the Lord diſtreyn the Cattell of the Tenant only for rent, &c. and afterwards pendant the plee, the Lord doth diſtreyn the Cattell of the Tenant and ſtranger which they hold in common for the ſame Cauſe; it ſeemeth that the Tenant ſhall not have a Recaption for thoſe Cattell for the intereſt of the ſtranger: *Quære.* E

And if the Lord diſtreyn, and the Tenant ſueth a *Replevin* which is removed in the Common Pleas, and the Conuſans is delivered by the Baily of the Freehold and is granted, and afterwards the Baily fail to do right unto the party; If he diſtreyn again for the ſame cauſe, the Tenant ſhall have a *Recaption*, becauſe the Lord ought to remove the plee into the Common Pleas again by Reſummons, *&c.* F

And a Recaption lyeth where the Lord diſtreyneth other Cattell of the Tenant then he firſt diſtreyned, as well as if he had diſtreyned the ſame Cattell again, if it be for one and the ſame cauſe, as I conceive. And yet in 19 *E.* 3. the iſſue was taken upon the property of the Cattell, or that they were other Cattell of the plaintiff, &c. G

And a Recaption lyeth as well where the Lord diſtreyneth the Tenant again for the ſame cauſe, where the plee is depending in the County before the Sheriff, as wel as where the plea is depending before Juſtices of Record.

And if the plea be depending in the County before the Sheriff, then the form of the Writ of Recapion is: H

The K. to the Sher. &c. to wit A hath ſhown, that whereas thou the beaſts which B. took, and unjuſtly detayneth, to the ſame A, without

without our Writ hadſt replevied, and given day untill thy next court, and the foreſ. B attached to anſwer this to the foreſ. A, the ſame B after the attachment the beaſts of the foreſ. A again hath taken on the ſame occaſion before took them, and them as before deteyneth, and becauſe this is unjuſt, and maniſeſtly againſt our peace, we command thee that the beaſts of the foreſ. A without delay to be delivered thou cauſe untill the chief plea betwixt them is determined. And if thou findeſt that the foreſ. B, the beaſts of the foreſ. A. again took on that occaſion before took them, and them as before deteineth, then the body of the foreſ. B have thou before thy ſelf, and the Keeper of our pleas of the Crown at thy next Court; and if by thy Baylics, by which the beaſts of the foreſ. A. replev. were, and by other good and legal men of the Coun. be may may be convinced of ſecond taking, for one and the ſame occaſion, then him B. ſo by mer. chaſtiſe, that that chaſtiſement in ſuch caſe make others fear to offend.

And if the plaint be in the County by Writ of *Replevin* depending before the Sheriff, then the Writ is ſuch:

The K. to the Sher' of S. A hath ſhown us, that whereas he our Writ lately brought his beaſts to him to replev. which B. took, and unjuſtly deteyneth and thoſe beaſts to the ſame A thou haſt replev. and to the ſame given day unill the next Court. &c. as in the Writ before. And if the plaint be removed out of the County by *Recordare*, then the form of the Writ of *Reception* ſhall be ſuch:

The K. to the Sher. &c. *A hath ſhown us, that whereas B the beaſts of the foreſ. A took, and unjuſtly deteyned and thou at the plaint of him A as the manner is, thoſe beaſts to the ſame A haſt repleviced and to him given day untill thy next Court, and the foreſ. B attached to anſwer upon this the foreſ. A. and after we commanded thee that thou ſhould have the rec. of the plea foreſ. before our Juſtices at Weſtm. ſuch day laſt paſt the ſame B. hanging the plea before the foreſ. Juſtic. the beaſts of the foreſ. A again took,* &c.

And if the plaint be removed out of the County by a *Pone*, into the Common Pleas, then the Writ of *Reception* is ſuch:

The K. to the Sher. &c. *A hath ſhown us, that whereas he our Writ lately to thee brought, his beaſts to him to replev. which B. took and unjuſtly detaineth, and thoſe beaſts to the ſame A thou haſt repl. and to him given day to thy next Court, and the foreſ B attached to anſwer upon this the foreſ. A. and after we commanded that*

plea

plea to be put before our Justic. at West. such day last past, the same B *hanging the plea foresd. before the same Justic. the beasts of the foresd* A *again took, on that occasion he before took them, and those as before deteyn, and in contempt of our precept to be justiced permitteth not; and because this is unjust, and manifestly against our peace, thee we com. that if the foresd.* A *shall secure thee his claim to prosecute, &c. then put by (sureties, &c. the foresd.* B, *that he be before our Justic foresd. to answer us for the contempt foresd. and the foresd.* A *of the tresp. foresd. and have there the names of the pledg. and this Writ, and those beasts to the same* A. *to be replevy. cause. Witnesse, &c.*

[73] If a man sue a *Replevin* by Writ, and the Sheriff send unto A the Bayliff of the Liberty to replevie the cattell, because that the taking was within the Liberty, and afterwards the plaint is removed by *Pone* into the Common Pleas, and afterwards the Lord, or the party who distreyned before distreyn again for the same cause, then he who is so distreyned shall have a Writ of Recaption, and the Writ shall be such.

The King to the Sher. &c. S hath shown us, that whereas he our Writ to thee lately brought a certain horse of his to him to replev. which I *and* A *took and unjustly detein'd, and the Baylies of the liberty of the Abbot of* R. *of* C. *whom the return of our Writ foresd. thou didst cause to have, that horse to the same* S *had replevied, and the foresd.* I *and* A *attached to answer this to the foresd.* S, *and after we commanded that plea to be put before our Justic. at Westm. such day the third year of our reign the foresd* I *and* A *hanging the plea foresd. before the bail of the foresd Abbot of his Court foresd. before whom that plea accord. to the liberties to the same Abbot granted by the same Justic returned is to be pleaded, the beasts of the foresd. S have again taken, &c. as aforesaid.*

And if a Lord of a Hundred or a wapentake, who hath B power to hold plea, *de vetito Namio*, &c. and where a man distreyneth another there, for which he hath a Replevin within the Hundred, and pendant the plea there the party who distreyned before distreyned the same man again for the same cause; then he who is so distreyned shall have a Writ of Recaption in such form directed unto the Sheriff.

The K. to the Sher. &c. A hath shown us that whereas B *the beasts of the foresd.* A *had taken, and unjustly detayned for the Baylies of* M *of* N. *at the plaint of him* A (*as the manner is*) *whose beasts to the same* A *had replevied, and to him given day untill the next Wapentake of their foresd. Lord of* N. *and the foresd* B *had ne-*

glected

tached to anſwer the foreſ. A. *after we commanded thee that taken with thee, &c. thou ſhould go to the foreſ. Wapentage, and in full Wapentage, &c. without our Writ, betwixt him* A. *and the foreſ.* B. *of the foreſaid beaſts of him taken, &c. and that record, &c. the ſame* B. *hanging the plea, &c. on that occaſion be before, &c. to ſut, &c.* as before in the Writ of Recaption.

C And now it appeareth by theſe Writs of Recaption, that if a man be diſtreyned, and he ſue a Replevin by plaint before the Sheriff in the County, and afterwards hanging that plaint, he is diſtreyned again for the ſame cauſe, that he ſhall have a Writ of Recaption, which ſhall be directed to the Sheriff, and that the Sheriff ſhall hold plea upon that Writ of Recaption.

But if a man be diſtreyned within any Liberty, and he ſue a Replevin there by plaint, or by writ, and pend. that plaint in the Liberty he be diſtreyned again for the ſame cauſe, by the perſon who diſtreyned before, he ſhall not have upon that diſtreſs a Writ of Recaption, becauſe the plaint is not pendant before the Sheriff, nor before the Juſtices, and the King will not direct the Writ of Recaption but unto the Sheriff. But if the plaint were removed by *Pone*, or *Recordare* out of the Liberty before the Juſtices, then the party who was diſtreyned ſhall have Recaption, as well for the diſtreſs which was before the Writ of *Pone* or *Recordare*, as if the retaking had been after the *Pone* or *Recordare* ſued forth.

D And if a man be convicted before the Sheriff in a Writ of Recaption, *&c.* he ſhall be amerced, and render damages unto the party for the contempt. But if he be convicted before the Juſtices in a Writ of Recaption, he ſhall be fined, and not amerced, and alſo ſhall render damages unto the party for the contempt.

Writ de Withernam.

E THis Writ lyeth where a man taketh the Cattell or goods of another man, and the party ſueth a *Replevin* by Writ, and an *Alias* and *Pluries*, and upon the *Pluries*, the Sheriff doth return, that the cattell or goods, *&c.* are eſloyned, *&c.* by reaſon whereof he could not replevie them, *&c.* Then this Writ of *Withernam* ſhall iſſue out of that Court where the *Pluries* is returned, returnable in the Kings Bench or Common Pleas, and the form of the Writ is ſuch:

F *The King to the Sheriff of* Lincolneſhire. *Whereas many times we*

command thee that juſtly, &c. A *his beaſts which* B. &c. *or the cauſe* &c. *why our command many times to thee therefore directed execute thou wouldeſt not; and thou diſt ſignifie unto us, that after the foreſ.* B. *the beaſts of the foreſ.* A. *took, and in thy coun. thoſe drove from the coun. foreſ. to the coun. of* B. *thoſe to the ſame* A. *replevie thou couldſt not. We his malice to meet with willing in this part, command thee that the beaſts of the foreſ.* B. *in thy ſhire thou take in Withernam, and thoſe detcineſt, untill to the ſame* A. *his beaſts foreſ. accord. to the Law and cuſtom of our Realm replevie thou may, accord. to the tenor of our commands foreſ. before to thee*, &c.

And in the Writ of Withernam he ought rehenſe the cauſe G which the Sheriff returneth for which he cannot replevie them; as to ſay, *And after the foreſ.* B. *thoſe chattels or beaſts took, thoſe chattels or beaſts, or Ox or Horſe be eluined out of thy ſhire, therefore no deliverey thereof to the ſame* A *thou couldeſt make, as to us thou haſt ſignified; we*, &c. *command thee, that the chattels or beaſts*, &c. *as the caſe is, in thy ſhire to the value of the chattels*, &c. *of the foreſ.* A. *without delay thou take in Withernam, and thoſe deteyn untill to the ſame* A, &c.

And there are very many Cauſes that the Sheriff may return upon the *Pluries*, wherefore he cannot replevie them, [74] whereof diverſe of them do appear in the Regiſter, which a man may there ſee.

And if the Sheriff do return upon the *Pluries repleg.* that A he hath ſent unto the Bayliff of the Liberty who hath return of Writs, *&c.* and that the Bayliff hath given anſwer, that he cannot execute the Writ becauſe he cannot have a view of the cattell, or goods which were taken. Then the Court in which ſuch return is made, ſhall award a Writ of *Withernam* directed unto the Sheriff, and the ſheriff ſhall thereupon make his p ſcept unto the Bayliff of the Liberty, and if the Bayliff of the Lib rty doth not make a return thereof unto the Sheriff, then the *Sheriff* ſhall return the whole matter in Court, and thereupon the Court ſhall award a Writ of *Withernam* and a *Non omittas* with the clauſe; and the form of the Writ ſhall be ſuch:

The K. to the Sher. of B. *greet. Whereas many*, &c. unto *or could not* and R. of C. *baily of the Liberty of St Wiric. whom the return of this our Writ thou cauſeſt to have, thee anſwered, that execution of this Writ make he could not, becauſe view of the beaſts foreſ. have he could not, as thou to us haſt ſigni-*

ſignified, wherefore thee we command that the beaſts of the foreſ. B. in thy ſhire, without delay thou ſhouldeſt take in Withernam, and thoſe detein untill to the ſame A. his beaſts, &c. therefore directed, or the cauſe to us ſhould ſignif. &c. and thou couldeſt not, and thou to us returneſt. that the ſame R. Bayly of the Liberty foreſ: whom the ret. &c. thou haſt made to have, no anſwer thereupon gave thee; we command thee that thou omit not for the liberty foreſ. but that thou enter, &c. take in Withernam untill, &c. accord. &c. before thee, &c. Witneſs, &c.

B And if a man diſtreyn any mans cattell, and he ſue a Replevin by plaint made unto the Sheriff, for which the Sheriff makes a Precept to the Baily to replevie them, and the Bayliff return at the next County, that he cannot replevie the cattell becauſe they are eſſoyned, or that he cannot have view of the cattell; then the Sheriff in the ſame County Court ought to make enquiry if it be true which is returned, and if it be ſo found by the jury, then the Sheriff *ex officio*, ſhall make a Precept unto his Bayliffs in the nature of a Withernam, to take as many cattell of the other party; and if the Sheriff make ſuch Precept to take the others cattell in Withernam, and the Bayliff will not execute the Writ, then the party may have a ſpeciall Writ out of the Chancery, directed unto the Sheriff, commanding him to do Withernam, and to do execution of the firſt Judgment, and the Writ ſhall be ſuch:

The K. to the Sher. A. hath ſhown us, that whereas B. and C. the beaſts of the foreſ. A. had taken, and unjuſtly detein, and the ſame A. before thee had proſecuted, for his beaſts foreſ. to him accord. to the Law and cuſtom of our Realm to be replev. and although by I. thy Bail. whom the beaſts foreſ. of the ſaid A. to replev. thou didſt ſend, it be witneſſed, and by enquiſi (as the manner is) in thy full court made is found, that the ſame Baily view of the ſame beaſts could not have thoſe to the foreſ. A. to repl. wherefore in thy full court it was conſidered, that the beaſts of the foreſ. B. and C. in thy ſhire ſhould be taken in Withernam, and detеyned untill to the ſame A. his beaſts accord. to the Law and cuſtom of our Realm replev. may be: The ſame A. execution of the conſideration foreſ. as yet hath not got, to the no ſmall loſs and grievance of him A. and becauſe we would help the foreſ. A. in this part, we command thee that if it be ſo, that the beaſts of the foreſ. B. and C. thou take in Withernam, and thoſe detеyn, untill to the ſame A. his beaſts foreſ. repl. thou mayeſt accord. to the Law and cuſtom of our Realm, and accord. to the conſideration foreſ.

And by that it appeareth, that the Sheriff may award Wi- C
thernam, or Replevin ſued by plaint if it be found by enqueſt
in the County, that the Cattell are eſloyned according to the
Bayliffs return, *&c.* But upon the Withernam awarded in the
County, if the Bayliff do return, that the other party hath
not any thing, *&c.* he ſhall have an *Alias* and a *Pluries*,
and ſo infinite, and hath no other remedy there.

But upon a Withernam returned in the Kings Bench or D
Common Pleas, if the Sheriff do return that the party hath
not any thing, *&c.* there a *Capias* ſhall be awarded againſt
him, and Exigent, and proces of utlagary.

In a Replevin ſued by Writ at the *Pluries* returnable, the
Sheriff doth return, *quod averia elongata ſunt*, &c. Now if
the defendant appear, the plaintiff ſhall not have a Wither-
nam, becauſe the defendant may gage deliverance. And if
the defendants cattell be taken in Withernam, they ſhall not
be delivered to the plaintiff, but the Sheriff ſhall keep them
quouſque, &c. and the ſame appeareth by the words of the
Writ; but it is ſaid that it is the uſage in the Kings Bench,
that they ſhall be delivered unto the plaintiff, by which it
ſeemeth, that the form of the Writ of Withernam there is in
another manner then it is in the Regiſter.

Note the laſt caſe. 13 H. 7. the defendant at the exigent after the Withernam.

In a Replevin at the *Pluries* return, the Sheriff doth re- E
turn *quod averia elongata ſunt*, &c. and the defendant doth
appear and pleadeth, that he did not diſtreyn them; now the
plaintiff ſhall not have Withernam. And ſo if the defendant
at the *Pluries* returned appear, and plead that the cattell are
dead in the default of the plaintiff, the plaintiff ſhall not have
Withernam.

And the defendant in ſome caſes ſhall have a Wither- F
nam againſt the plaintiff; as if the defendant hath a return
awarded for him, and he ſueth a Writ *de retorno habendo*, and
the Sheriff return upon the *Pluries*, *quod averia elongata ſunt*,
&c. he ſhall have a *Scire facias* againſt the pleges, *&c.* ac-
cording unto the Statute of *Weſt* 2. and if they have no-
thing, then he ſhall have Withernam againſt the plaintiff of
the plaintiffs cattell. *qd. vide* 7. R. 2.

Moderata Miſericordia.

[75] 14 H. 4. 4. THe Writ of *Miſerata Miſericordia*, lieth in caſe, where a A
man is amerced in a Court Baron, or other Court which

is

is not a Court of Record, outragiouſly for treſpas or other offence, then he may ſue this Writ directed unto the Lord of the Court or unto his Baylies, commanding them, that they moderately amerce the party according unto the quantity of the treſpaſs, *&c.* And this Writ is founded upon the Statute of *Magna Charta*, *cap.* 14. *Quod nullus liber homo amercietur, niſi ſecundum quantitatem delicti*, &c. and the Proceſs upon this Writ is *Alias* and *Pluries*, and attachment, and the Attachment ſhall be awarded againſt him againſt whom the originall Writ was ſued; and the form of the Writ is ſuch.

B *The King to the Bail. of* I S *greet.* C *hath ſhown us, that whereas he amerced was in the Court of the foreſ. Lord of* A *for a ſmall fault, into which he fell, you from him exact a grievous ranſome, againſt the tenor of Magna Charta of the Liberties of England, in which is conteyned that no free man ſhall be amerced but according to the quantity of his fault, and this ſaving to him his contenement, and a villein ſaving his wainage, and therefore you we command that from the foreſ.* C *moderate amercement you take, accord. to the quantity of his fault, that no iterated clamour come to us therefore. Witneſſe,* &c.

And the Attachment ſhall be alwais directed unto the Sheriff, and the Writ ſhall be ſuch:

The K. to the Sher. &c. *If* A *ſhall.* &c *then ſum*[mon] B *and* C. *Bail of the Lord of* I, *that they be before our Juſtic. at Weſtm. to ſhow why, whereas the ſame* A *lately was to be amerced in the Hundred, or Court of the ſaid Lord of* I *for a ſmall fault into which he fell, and we at the requeſt of him* A *the foreſ. Baylies commanded, that accord. to the tenor of Magna Charta of the Liberties of England, moderate amercement they ſhould take accord to the quantity and manner of his fault, the ſame Baylies deſpiſing our mandates foreſ. from the foreſ.* A *grievous ranſome therefore by ſeverall diſtreſſes have not ceaſed to extort in contemp. of us, and to the grievous loſſe of him* A *and againſt the tenor of the Charter foreſ. as is ſaid, and have there the ſum.* &c. *Witneſſe,* &c.

C And if a man be amerced in a Court Baron, where he did not any treſpaſs, but it is ſo preſented by the Enqueſt, *&c.* Yet it ſeemeth he ſhall not have this Writ, if the amercement be not outragious. But if the Steward of his own head will amerce any tenant or other party without cauſe, I conceive the party ſhall have an Action of Treſpaſs, if he be diſtreyned for that amercement, and the party ought not ſo to ſue his Writ of *Moderata Miſericordia.*

If a feme Covert be amerced for a Treſpaſſe, *&c.* If the Husband be diſtreyned for the ſame, he ſhall have this Writ if the amercement be outragious. D

But what ſhall be ſaid a moderate amercement, and what not, appeareth by the words of the ſaid Statute, which ſaith *Secundum quantitatem delicti.* By which it ſeemeth that if it exceed the value of the Treſpaſſe, it is not a moderate amercement; and that ſhall be intended for the value of the Treſpaſſe which is done unto the Lord, and to him who ſhall have the amercement; for if one Tenant do Treſpaſſe unto another Tenant, he ſhall be therefore amerced in the Lords Court by preſentment of the Treſpaſſe; but that amercement ſhall not be unto the value of the dammages which is done unto the Tenant, that having regard unto the wrong and offence done unto the Lord for the wrongs done unto his Tenant. E

And if a man be nonſuit in a Court Baron, he ſhall be amerced, and if it be outragious, he ſhall have this Writ of *Miſerata miſericordia*; and ſo ſhall the defen. if he be amerced in any ſuit brought againſt him, becauſe it is found againſt him; or that he findes to wage his law at the day given him in any plaint ſued againſt him, *&c.* And if the amercement be not moderate, he ſhall have this Writ of *Miſerata miſericordia. &c.* F

In a Court, Baron if two be amerced for one Treſpaſſe outragiouſly, they ſhall not joyn in a *Miſerata miſericordia*, for they ſhall be ſeverally amerced, although the Treſpaſs be jointly done; and ſo is it in a plaint ſued by two, if they be nonſuit, the amercements ſhall be ſeverall, and they ſhall not joyn in *Moderata miſericordia*: yet if an amercement be ſet joyntly upon them, then they ſhall joyn in the Writ. But it ſeemeth this amercement ought to be offered by perſons certain. When they are amerced for any Treſpaſſe, and the amercement which is ſet be affirmed by his Peers, then this Writ of *Moderata miſericordia* doth not lye. For then it is according unto the Statute of *Magna Charta q.d.vid.* 10 E.2. in title of Actions upon the Statute in the abridgement. G

And it is called *Miſericordia*, in Engliſh Mercy, for the ſmalneſſe thereof, by which it ſeemeth it ought to be leſſe then the offence, and then it ſeemeth they ſhall be ſeverally amerced for a joynt offence, becauſe one ſhall not be charged for the offence of another. But they ſhal equally bear their charge, and pay the ſumme aſſeſſed. H

And

I And in the Common Pleas the course is, when divers defendants, to make severall estreats of the amercements, and to deliver them unto the Clark of the Assise, and he shall deliver them unto the Coroners, and they use to *afferre* the amercements severally.

K And if divers demandants be amerced in a real action for their nonsuit, they make the estreats severally upon them, and deliver them as before unto the Clark of the Assise, who delivereth them over unto the Corroners to *afferre* the amercements.

But in a perso al Action in the Common Pleas, where there are many plaintiffs named, and they amerced, the Clark hath forgotten, and cannot shew how the usage hath been to make the Estreats against them; But it seemeth with reason, that all shall be done in one manner. For it cannot properly be said that a man hath mercy shewed and offered unto him, if he shall pay, or shall be put to more charge for the offence of another person which himself hath not done: For the nature of the word (Mercy) is, That a man shall not be punished so much as he hath deserved; By which it appeareth, that every amercement shall be or ought to be severally assessed upon every one for his own offence, and that to a lesser summ then he deserveth to pay. *Quare* the usage and manner thereof in the Common Pleas, and look the Statute of *West.* 1. *cap* 18. by the equity of which Statute, the usage is acrued and doth continue in the Common Pleas, and Kings Bench, and before the Justices of Assise, and the Clark of the Warrants in the Common Pleas doth make the Estreats, and doth deliver them unto the Clarks of the Assises to deliver them unto the Coroners to *afferre* the amercemen s, and the Coroners do assesse the amercements, and deliver them unto the Clarks of the Assises, and they deliver them back unto the Clark of the Warrants, who maketh the Estreats; and then one of the Justices of the Common Pleas, or the Clark of the Warrants goeth with the Rols of the Estreats into the Exchequer, and there put them before the Barons of the Exchequer. And the form of the Estreat is such: [76]

A *Staff. of Henr. Hart, and Will. Maner, because they had not John Brook lately of B in the County forest. Yeoman, because they mainprised, &c. of Joh. N. for himself and his pledge, because he prosecuted not his Writ against* N. H. *of* K. *in the County forest. Husbandman in the plea of debt,* &c.

Of Stephan White for his falſe clamour againſt D *of &c. in the plea of detinue*, &c. And ſo the Eſtreat doth rehearſe the cauſe for which he was amerced, *&c.* For the Juſtices do not aſſeſſe any ſumme for any amercement upon no perſon, but make there entry as aboveſaid; and then the Coroners do ſet the ſumme upon the heads of every of them; as upon every one of them 4ˢ or 6ˢ as they ſhall think fit in their diſcretions, *viz.* ſeveralty upon every of them.

And by the Statute of *Magna Charta. cap.* 14. no ſpiritual B perſon ſhall be amerced according to his ſpirituall Benefice, but according unto his lay fee, and according unto the quantity of the Treſpaſſe, and if he be otherwiſe amerced, he ſhall have a Writ upon the ſaid Statute againſt the *Sheriff*, or him who amerced him. And the Writ ſhall be ſuch:

The K. *to the Sher.* &c. *Whereas in the great Charter of the liberties of* England *is contained, That no Eccleſiaſtical perſon ſhall be amerced according to the quantity of his benefice Eccleſiaſtical, but according to his lay fee: And now of the grievous plaint of* S. *parſon*, &c. *we have received, that though he no lay fee holdeth, thou notwithſtanding him* S. *in thy turn, in ſuch Hundred, upon ſome things before thee in the ſame turn preſented, him* S. *upon theſe not ſummoned, nor lawfully convict, at thy will grievouſly haſt amerced, and that amercement of his goods Eccleſiaſtic. to levy intendeſt leſs juſtly, to the no ſmal dammage of him* S, *and againſt the tenor of the Charter foreſ. we not willing him* S *in this part to be grieved, command thee, that if be ſo, then him* S *before thee ſo to be amerced, or any amercement of his goods Eccleſiaſtic. to be levied thou cauſe not, againſt the tenor of the Charter aboveſ. and diſtreſſe if any*, &c. *Witneſſe*, &c.

And it ſeemeth that the party may ſue a Writ upon the Sta- D tute by a *Pone*, &c. if he will, againſt the *Sheriff* or the other who amerced him, becauſe that the Statute is a prohibition in it ſelf, and needeth not ſue ſuch Writ as aforeſeid. And by the *Statute of Magna Charta* every amercement in a Court Baron ought to be aſſerred by two Tenants of the Mannor upon Oath. And if the ſteward or baily will aſſeſſe any amercement without aſſerrement, then he who is amerced ſhall have ſuch Writ.

The K. *to the bailies of the Biſh. of* S. *greet. Whereas in the great Charter of the Libertie of* England *is contained that no free man ſhall be amerced for a ſmall fault, but according to the manner of his fault, and for a great fault according to the greatneſſe*

neſſe of his fault ſaving his contenement, and a merchant in the ſame manner, ſaving his merchandiſe, and the villein of anothers then ours, in the ſame manner ſhall be amerced ſaving his wainage, if he fall into our hand, and none of the amercements foreſ. ſhall be aſſeſſed, but by oth of good and legal men of the Vicinage, as in the ſame Charter more fully is conteined: and now of the plaint of the men, and tenants of the manner foreſ. we have received, that you thoſe men and tenants, when in the Court of the ſame manner into amercement they fall, for any duty, to great ſummes of monies wilfully aſſeſſe, not permitting thee that amercement by oath of the men, and tenants of the ſame manner be aſſeſſed, to the no ſmall dammage of thoſe men and tenants, and againſt the tenor of the Charter foreſ. we willing that Charter in all and every its articles to be obſerved, command you, that ſuch ſummes upon the men and tenants foreſ. when into amercement they fall wilfully to aſſeſſe you altogether deſiſting, ſuch amercement by oath of good and legal men of the ſame Court to be aſſeſſed, you permit accord. to the tenor of the Charter foreſ. Witneſſe, &c.

And he may ſue an *Alias* and a *Pluries* thereupon, and afterwards an attachment againſt the bailies, or him who aſſeſſeth the amercement.

Writ de Nativo habendo.

A THe Writ of *Nativo habendo* lieth for the Lord who claimeth the inheritance in any villeyn, when his villeyn is runne from him; and is remaining within any place out of the mannor unto which he is regardant, or when he departeth from his Lord againſt the Lords will: and the Writ ſhall be directed unto the Sheriff, and if the Sheriff will not ſerve the Writ, he ſhall have an *Alias* and a *Pluries*, and attachment againſt the Sheriff if need be.

B But if a man have an eſtate but for term of life or for years in a villeyn, it ſeemeth he ſhall not have this Writ of *Nativo habendo*, becauſe this Writ is in the nature of a Writ of Right for to recover the inheritance in the villeyn, and the ſame appeareth by the Count in the Writ. *Quære tamen.*

C And the Sheriff may ſeiſe the villein, and deliver him unto his Lord, if the villeyn confeſſe unto the Sheriff that he is his villeyn; but if the villeyn ſay to the Sheriff, that he is Franc. then it ſeemeth the Sheriff ought not to ſeize him: As it is in a Replevin, if the defend. claim propetty, the Sheriff cannot

vi. 1. & 2. El. *Dyer.* 173. *Where this Writ lieth and out of what Court. And vi.* 1 E. 4. 6. a good Caſe.

not replevie the Cattell, but the party ought to ſue a Writ *de Proprietate probanda*, and ſo if the villeyn ſay, that he is a freeman, *&c.* then the Sheriff ought not to ſeiſe him, but then the Lord ought to ſue a *Pone* to remove the plea before the Juſtices in the Common Pleas, or before the Juſtices in Eyre. But if the villeyn purchaſe a Writ *de Libertate Probanda* before the Lord hath ſued the *Pone* to remove the plea before the Juſtices, then that Writ of *Libertate Probanda* is a Superſedeas unto the Lord, that he proceed not upon the Writ of *Nativo habendo* till the Eyre of the Juſtices, or till the day the plea be adjorned before the Juſtices, and that the Lord ought not to ſeiſe the villeyn in the mean time. But at this day the Writ of *libertate probanda* is of little effect, becauſe by the Statute of 25 *E.* 3. *cap.* 8. the Lord may ſeiſe his villeyn, and alledg villenage in an action brought againſt him by the villeyn, although he hath a Writ *de libertate probanda* depending, which is adjourned before the Juſtices in *banco*, or the Juſtices in Eyre.

And if the Lord ſue a *nativo habendo*, and the villain purchaſe this Writ of *libertate probanda*, by that the Sheriff ſhall not proceed farther in the Writ of *nativo habendo*, but the whole plea ſhall be adjourned before the Juſtices in Eyre, and then the Writ of *nativo habendo* and the Record ſhall be ſent before the Juſtices in Eyre, and the Lord ſhall declare thereupon, and the villeyn ſhall make his defence, and plead thereunto; and the villain ſhall not declare upon the Writ *de libertate probanda*, nor any thing ſhall be done thereupon. For that Writ is but a Superſedeas to ſurceaſe for the time, and to adjorn the Record and the Writ of *nativo habendo* before the Juſtices in Eyre, and that appeareth by the forms of the Writs of *nativo habendo* and of *libertate probanda*; which are ſuch:

The King to the Sher. &c. *greet. We command thee that* E *juſtly and without delay thou cauſe* A *of* C *to have* B *his villein and fugitive, with all his chattels and his whole ſequel whereſoever he ſhall be found in thy bailywick unleſſe he be in our demeſne, who fled from his land after the coronation of Lord* H *the King, ſon of King* John, *and we forbid upon our forfeiture, that no man him unjuſtly detein.* &c.

The form of the *libertate probanda* is ſuch:

Liber-

Libertate Probanda.

F *THe King to the Sher. &c. A. and B. her ſiſter have ſhowen us, that Whereas they are free women, and ready their liberty to prove, F. claiming them his nieſes, vexeth them injuſtly, and therefore we command you that if the foreſ. A. and B. ſhall ſecure thee their liberty to prove, then put that plea before our Juſtices at the firſt Aſſiſes when to thoſe parts they ſhall come, becauſe ſuch like proof it belongeth not to thee to take, and in the mean time the ſame A. and B. peace therupon to have cauſe thou, and ſay to the foreſ F. that then he be there, that plea againſt the foreſ. A. and B. thereupon to proſecute, if he will, and have there this Writ. Witneſs, &c.*

G And now by theſe two Writs it appeareth, That the Lord who ſueth the Writ *de Nativo habendo*, ſhall perſue his plaint upon the Writ of *Nativo habendo*, and ſhall declare thereupon, *&c.* and that the villein ſhall make defence, and upon that Writ *de Nativo habendo*, the freedom ſhall be tried: and alſo it ſeemeth by theſe Writs, that a Writ of *Libertate probanda* doth not lye, if not upon a Writ of *Nativo habendo* ſued out before by the Lord. 11 *H.* 4. 48. Gaſcoigne. ac.

H But it appeareth in 12 *H.* 3. *Itin. North.* That the villein ſued a *Libertate probanda & obtulit ſe* at the fourth day againſt the Lord, and he did not appear but made default, for which upon the default of the Lord, the villein was enfranchiſed, and he had a Writ unto the Sheriff, that he do not ſuffer the Lord to trouble him after, *qd. vide* in title Villenage in the Abridgment: And *vide* 45 *E.* 3. a good Caſe of that matter. Fitz. Villenag. 44. Fitz. Villenag. 35.

A And when he ſueth the *Nativo habendo*, he ſhall enter a plaint before the Sheriff in the County, as he ſhall do if he ſue a Replevin by Writ unto the Sheriff, he ought to enter his plaint before the Sheriff; and ſo he ſhall do upon the *Nativo habendo*: and the plaintiff ſhall recite how he is his villein, and how that he fled from him, *&c.* And by the Writ of *Libertate probanda*, that plaint ſhall be removed before the Juſtices in Eyre, or before the Juſtices *de Banco*, and then the matter ſhall be tried before them, *&c.* Or the Lord may remove the plaint by a *Pone*, before the Juſtices of the Common Pleas, and thereupon he ſhall have proces againſt the villein, *&c.* for the Sheriff cannot determin the Title of villenage in the County, and that is proved by the words in the Writ of *Libertate probanda*, viz. *Quia hujuſmodi probatio non pertinet ad te capiendum, &c.* [78]

And

And it is good for the Lord, that when he ſueth the *Nativo habendo* unto the Sheriff, that forthwith he ſue his *Pone* unto the Sheriff to remove the plaint before the Juſtices of the Kings Bench, for if after the *Nativo habendo* ſued, the Lord ſueth a *Pone* to remove the plaint before the Juſtices *de Banco*, and before he delivereth the *Pone* to the Sheriff, the villein ſueth *Libertate probanda*, and delivereth the ſame to the Sheriff, by which the Sheriff adjorned the plaint before the Juſtices in Eyre, and returneth the matter upon the *Pone* before the Juſtices of the Kings Bench: now the Juſtices of the Bench ought not to proceed upon that *Pone* againſt the villein, becauſe that the Sheriff hath returned, that he hath adjourned the matter before the Juſtices in Eyre by the Writ of *Libertate probanda, qd. vi. Hill* 26 *E.* 3. and yet the *Pone* was of elder dat. then the Writ *de Libertate probanda*, but was not delivered unto the Sheriff before the *Libertate probanda*.

11 *H.* 4. 48. Gaſcoigne.

Old Nat. *Brev.* 46. 25 *E.* 3. 49. *Vilenary* 12. that the party is without remedy, if not againſt the Sheriff.

And if a man ſueth ſeverall Writs of *Nativo habendo* againſt two, the two may joyn in a *Libertate probanda*, notwithſtanding the ſeverall Writs

And a man cannot joyn in a Writ of *Nativo habendo* but two villeins, but in favour of Liberty many villeins may joyn in a *Libertate probanda*.

2 *E.* 4. 16. by *Martin* all of the bloud may joyn. But if they be of the half bloud they ſhall not joyn. *Br. Vellenage* 68

And it ſeemeth that the villein may ſue a *Libertate probanda* before the Juſtices *de Banco*, as well as before the Juſtices in Eyre, although there be no ſuch Writ in the Regiſter. But if ſuch Writ be made returnable before the Juſtices *de Banco*, it ſeemeth it is good, and they ſhall proceed thereupon as if it were before Juſtices in Eyre.

6 *E.* 2. *Vill.* 26 after a non-ſuit he was enfranchiſed during the plaintiffs life *Br. Villenage* 26. 29. *E.* 2. *cont* before appearance 19. *E.* 2. *Vill.* 31. 19 *E.* 2. *Fitz. Vill.* 24. the plaintiff Count upon a Confeſſion, and the defendant acknowledge it, and after the plaintiff was nonſuit, and *per Curiam* it is an infranchiſment for ever. 30. *E.* 1. *Vill.* 46. *Harvy & Mutton* ſhe is enfranchiſed but during the marriage. *Broughton cont.* King took the difference where the Lord marrieth the Neiſe, and where a ſtranger marrieth her.

In a Writ of *Nieſe*, if the plantiff be nonſuit after appearance, the def. ſhall be for ever enfranchiſed, *qd. vi. M.* 12. *E.* 2. & upon departure in deſpite of Court, where he appeareth, and ſaith he will ſeek counſell, and after he is demanded and maketh default, there the villein ſhall be for ever enfranchiſed; and ſo upon a *Retraxit*, if the plaintiff ſay that he will not purſue his Writ of *Nieſe*, the defendant ſhall be enfranchiſed for ever.

And

G And if a Free-man marrieth a woman who is a Niefe unto another, ſhe ſhall be for ever free, although that the Husband dieth and ſhe ſurvive him, and that by *Britton* in his Book in *favorem libertatis*. And it ſtands with reaſon that the Law be ſuch, becauſe that ſhe and her husband are but one perſon in Law, and ſhe ought to be of the ſame nature and condition to all intents as her husband is, but the husband is for ever free without any condition in Law or otherwiſe, and by conſequence the wife ought to be of the ſame condition and nature as her husbnad is, and then if he be once clearly diſcharged of Villenage to all intents, ſhe cannot be a Niefe afterwards without her own ſpecial act, as by Divorce, or Confeſſion in a Court a Record, and that in favour of liberty, for a Free woman ſhall not be villain by taking of the villain to be her husband. 28 Aſſ. 34. Br. Vill. 33. A frankhance married a Niefe with Licence, the Lord enfeoffed I. S. the husband dies, the wife is Neiſe as before. vide 18 E. 2. Vill. 30. cont. and there by Devon. ſhe remaineth Neiſe,

but the ſeiſure is ſuſpended. 13 H. 3. Vill. 43. ſhe ſhall not be produced to prove villenage during the coverture. 30 E. 1. Villenage 46. cont. 31 E. 3. Villenage 21. cont.

H In a Writ of Niefe it behoveth the Lord who ſueth the Writ to bring with him two perſons at the leaſt, who are of the villains bloud, that will confeſſe them to be villains, otherwiſe the Writ ſhall abate: And what ſhall be ſufficient proof, what not, ſee in the title of Villenage in the abridgements. But in a *Nativo habendo*, after the plea is removed by a *Pone*, if the defendant will confeſſe himſelf to be villain, then the plaintiff needeth not to bring any proof thereof. 13 E. 1. Villenage 38. 19 H. 6. 32. ac. 19 E. 2. Vill. 32. Coſen female, ſhall not be brought to prove the male villain. 13 E. 2. Vill. 36. 2. Old Na. Br. 46. ac. Old tenures Br. Villenage 68.

I If two bring a *Nativo habendo*, the nonſuit of one of them is the nonſuit of them both, for ſummons and ſeverance lieth not in that Writ. But in a *libertate probanda* it is otherwiſe, for there the nonſuit of the one ſhall not prejudice the other.

K And it appeareth by the Regiſter that the Sheriff cannot ſeiſe the villain by force of this Writ of *Nativo habendo*, although that the words of the Writ are *Haberi facias A. nativum & fugitivum ſuum*; for theſe words give him power to hold plea, and not otherwiſe, as it appeareth in 2 H. 4. in a *Faux* impriſonment. But if the villain doth confeſſe unto the Sheriff that he is a villain, then it ſeemeth reaſonable that the Sheriff ought to ſeiſe him, ſaving the opinion of that book.

L But the Statute now maketh the matter clear, that the Lord may ſeiſe him, and ſo the Sheriff at his requeſt. And the Proceſſe in the *Nativo habendo* is ſummons, attachment, and diſtreſſe.

In

In a *Nativo habendo* the plea was removed by a *Pone*, and M
the Sheriff returned thereupon, *Non eſt inventus*, for which a *Capias* was awarded, and after upon return of *Non eſt inventus*, a latitat was awarded, upon a ſurmiſe made that he was in a forreign County. *P. 7. H. 6.*

And in the *libertate probanda* the proceſſe is as upon the N
Pone ſued to remove a plaint in the County upon a Replevin ſum. attachment and diſtreſ. And the form of the *Pone* upon a *Nativo habendo* is ſuch:

The King to the Sher. &c. Put at the Petition of the Petitioner the plea which is in thy County by our Writ betwixt A. *and*
[79] B. *whom the ſame* A *claimeth to be his villein and fugitive and ſum' the foreſ.* A *thereupon to anſw. and have there the ſum' and this VVrit, and the other VVrit.*

And if the villein do remain in ancient demeſne of the A
King in the Kings hands, and hath remained there by a year and a day, then the Lord cannot have nor mainteyn this Writ of *Nativo habendo*, ſo long as he remaineth there; but if he hath not remained within the ancient demeſne of the King a year and a day, but for half a year, or other time which doth not make a year and a day, then the Lord ſhall have ſuch Writ unto the Sheriff;

The King to the Sher. &c. We command thee that unleſſe A. *whom* B. *claime to be his villein and fugitive in thy Coun. by our VVrit hath remained in our demean of S. for one year and day without challenge, let not the plea continue in the coun. foreſ. becauſe he hath remained in our demean leſſe time, VVitneſſe, &c.*

But it appeareth by the Writ, that if the Lord claim him within the year and day that he came into the ancient demeſne, that then the villein ſhall not have advantage of his ſtaying there; but it ſeemeth that the Lord ought to claim the villein within every year and day, that the villein ſtayeth within ancient demeſne, as he ſhall make his continual claim to ſave his entry into any Land. But if the villein do remain in any other Mannor then in ancient demeſne, which is in the poſſeſſion of other Lord then the King, and there ſtayeth a year and a day or for many years without any claim made by the Lord, that notwithſtanding that, the Lord may take and ſeize him, or have a ſpecial Writ of *Nativo habendo* againſt this villain directed unto the Sheriff, as above is ſaid.

If a man purchaſe a villein of another unto him and his B
heirs, and the villein runneth from him, he ſhall not have this

Writ

Writ *de Nativo habendo*, becauſe he hath no proof of his bloud who will confeſſe them to be villeins unto the plaintiff, and if he bring men of the villeins bloud, who confeſſe them to be villeins to a ſtranger and not the plaintiff, the ſame is not ſufficient proof. *Quære tamen.*

C And the Lord may have a Writ unto the Sheriff to aſſiſt him to diſtrein his villeins, and the Writ is: *The King to the Sher. &c. We command thee that thou aideſt A. of F. where he is not ſufficient to diſtrein his villeins of N. to do him the cuſtom and ſervices due and accuſtomed. Witneſſe, &c.* See *Stat.* 1. *R.* 2. *c.* 2.

D And when the King makes Tallage of his ancient Demeſne Lands in his hands throughout the Realm, then the other Lords who have ancient Demeſne Lands of the King in fee farm, ſhall have ſuch Writ to tax them, and the Writ is ſuch:

The K. to the Sher. &c. Becauſe our demeans through England to be taxed we have cauſed, we command thee, that if the Manor of C. any time was our demean, er of our progenit. heretofore Kings of England, and hitherto hath accuſtomed to be taxed, then A. reaſonable tallage cauſe to have of his free tenants in the manner forel. as before to be done hath been accuſtomed. Witneſſe, &c

E And if the Kings villeins do convey themſelves out of the Manor, then a ſpeciall Writ ſhall be directed unto the Sheriff, that he enquire by the Oaths of honeſt and good men the Names of them, and where they abide, and that he make them return and abide within the Mannors as before.

F If a woman ſueth a Writ of *Libertate probanda*, the form of the Writ is ſuch: Alice *hath ſhown us, that whereas ſhe is a free-woman, &c. and ready her freedom &c.*

Writ de Securitate Pacis.

G THis Writ lieth when a man is in fear or doubt, that another will beat or aſſault him; and lieth properly where one man doth threaten another man to kill him, beat him or aſſault him; then may he come into the Chancery, and pray to have ſuch Writ unto the Sheriff, and the form of the Writ is ſuch:

The K. to the Sher. of Linc. greeting becauſe A. of B. to us grievouſly complaineth that C. him of his body manifeſtly menaceth, we command thee that the forel. A. from the forel. C. our firm peace accord. to the cuſtom of Engl. thou cauſe to have, ſo that

that ſecured thou be, that to the ſame A. *in his body by the foreſ.* C. *or by his procuring damage nor peril come not. Witneſſe*, &c. Or thus: *Of the burning of his houſes manifeſtly menaceth, we command thee that*, &c. *ſo that*, &c. *of his houſes foreſ. by ſuch burning no damage*, &c. And a man may have a Writ for the ſafety of his body, and for the burning of his houſes all in one Writ. And he may have an *Alias*, and a *Pluries*, and Attachment againſt the Sheriff if he do not his Office, *&c.*

And by the auncient courſe of Law, he ought to take his Oath upon a book, before he have this Writ, before a Maſter of the Chancery; but now they uſe to ſue forth ſuch Writs by their friends, who will ſue forth them without any Oath made, and the ſame is ill done, becauſe they are many times ſued more for vexation, then for any good cauſe, and the Juſtices of the Kings Bench will not grant any Writ for ſurety of peace, without making Oath that he is in fear of corporall damage; and the Juſtices of Peace ought not to grant any Warrant at the ſuit of any one to finde ſureties of peace, if the party who doth require the ſame will not take his oath that he requireth the ſame not for malice, but for the ſafety of his body. H

[80] And if a man hath ſued a Writ againſt one directed unto the Sheriff, and the Sheriff take ſecurity of him to keep the peace, and afterwards he breaks the peace againſt him who demanded the ſame, he which demanded the ſurety of peace ſhall have attachment againſt him to finde ſureties; and the Writ is ſuch: A

The K. to the Sher. &c. *If* A. *ſhall*, &c. *put*, &c. B. *that he be before our Juſtices*, &c. *to ſhew, why whereas the foreſ.* B. *the foreſ.* A. *of his body menaced, the foreſ.* A. *on that occaſion, our Writ the peace thereupon to have to thee brought, the ſame* B. *though ſurety to thee he gave that by him or his procuring to the foreſaid* A. *of his body dammage or peril ſhould not come, the ſame* B. *notwithſtanding upon the foreſ.* A. *at* W. *with force and arms aſſault made, and him*, &c. *to the contempt of us manifeſtly, and the grievous dammage of him* A. *and againſt our peace, and have the pledge and this Writ. Witneſſe*, &c. And upon this Writ the plaintiff ſhall recover dammages, and the defend. ſhall be fined for his contempt if he be found guilty.

And if any one will have a Writ for ſurety of the peace againſt any one who dwelleth within the Cinque Ports, then he ſhall have a Writ out of the Chancery directed unto the B

Conſta-

Conſtable of *Dover*, and unto the Warden of the Cinque Ports, and the Writ ſhall be ſuch:

The K. to his beloved and truſty N, *Conſtable of his Caſtle of Dover, and to the Warden of the Cinque ports greet. We command you that hearing the plaint of* A *of that that* B. *is of the liberty of the Cinque ports*, &c. *menaceth, and calling before you the parties foreſ. and hearing ſeverally their reaſons, to the ſame* A *upon this due and ſpeedy performance of juſtice, to be made you cauſe, as of right, and accord. to law and cuſtom of our ports foreſ. is to be done, and other times in like caſe to be done hath been accuſtomed. Witneſſe*, &c.

C But it is a common opinion, The ſecurity which the Sheriff ought to take of the party, who ought to finde ſureties for the peace, ought to be taken by Bond, that is to ſay, to binde the party and his ſureties by Bond, that he keep the peace, nor that he burn the houſes, &c. But now after the Statute of 1 *E.* 3. cap. 6. which appointeth that certain perſons ſhall be aſſigned in the Chancery to keep the peace, there are other forms of Writs, for the caſe of the people who will have the peace againſt other perſons, which Writ ſhall iſſue out of the Chancery, and ſome of them are directed unto the Juſtices of the peace, and unto the Sheriff, and ſome are directed only unto the Sheriff, and theſe Writs are of other forms, which is ſuch:

D *The K. to his beloved and truſty* J, &c. *and his companions our Juſtices, our peace in the Coun. of* S *to keep aſſign. greet.* Or thus, *To the Keep. of our peace in the Coun. of* S, &c. *and to the Sher. of the ſame Coun. and to every of them greet.* Or thus, *To the Sher of* S *greet.* A *hath ſupplicated us that whereas he of life, and muſilac. of his members, as alſo of the burning of his houſes by* E *grievouſly and manifeſtly is menaced, we would for the ſurety of him* A *in this part provide, we to the ſupplicat. foreſ. yielding you, or thee command, firmly injoyning that the foreſ.* E. *before you or them bodily to come you cauſe, and him ſufficient main pern to finde, who him mainprize will, under a certain pain on them by th.e or you reaſonably to be impoſed, for which to us anſwer they will, or you will.* Or thus, *and him* E *ſuffic. ſuret. to find under pain of one hundred pounds to our uſe to be paid, or every of them under the pain*, &c. *that he any dammage or burt to the ſame* A *in his body or houſes by ſuch burning ſhall not do, nor to be done ſhall procure, in any manner, ye compell or thus compell, and if this before you or thee to do he ſhall refuſe, then him* E. *to our next Gaole commit ye, or commit*

thou in the ſame ſafely to be kept, untill this freely he will do, and when this ſurety ye ſhall have taken, or thou ſhalt have taken, then us thereupon in our Chancery under your ſeals, or of any your, or under thy ſeal diſtinctly and openly without delay make to know, certifie ye, or certifie thou forthwith, this Writ to us remitting ye, or remitting thou.

And by this form of Writ, when the Writ is in the plurall number, the Writ is directed unto the Juſtices of Peace, or unto the Juſtices and Sheriff. And when it is in the ſingular number, the Writ is directed unto the Sheriff only, or unto one Juſtice only. E

Sec 25. *b. f.* And if the Husband threaten his Wife to beat or to kill her, ſhe ſhall have this Writ. *A hath ſupplicated us the wife of B, that ſhe of her life and mutilat' of her members by the forcſ. B. &c as above to there anſwer will, that he the forcſ. A. well and honeſtly ſhall intreat and govern, and any damage or hurt to the ſame A in her body otherwiſe then what to her husband becauſe of ruling and correction of her his wife, lawfully and reaſonably belongs he ſhall not do, nor to be done procure in any manner compell ye, &c.* F

And if a man be in variance with other men, and he is in doubt that damage or hurt will come unto him, or his ſervants, or his goods, by reaſon of this variance, then he ſhall have a ſpeciall Writ againſt them directed unto the Sheriff, that he cauſe them to finde ſecurity, that they do not damage or hurt the other in his body, or his ſervants, or other his goods in a certain ſumme, *&c.* And if they will not finde ſecurity, that then he arreſt them and keep them in priſon, untill they will finde ſureties: And that the Sheriff certifie all that is done upon the ſame unto the Chancery, upon pain, *&c.* as it appeareth by the Regiſter; and that ſecurity ought [81] to be taken by Recognizance as it ſeemeth, *tamen quare.* And when a man hath purchaſed ſuch Writ of *Supplicavit*, directed unto the Juſtices of Peace, or unto the Sheriff, or unto both againſt any man, then he againſt whom the Writ is ſued, may come into the Chancery, and there finde ſureties in the Chancery, that he will not do hurt or damage unto him that ſueth the Writ, and then upon that he ſhall have a Writ of *Supplicavit* out of the Chancery, directed unto the Juſtices of peace, or unto the Sheriff, or unto one of them, reciting how that he hath found ſureties in Chancery according to the Writ of *Supplicavit*, and reciting the Writ of *Supplicavit*, and the manner of ſecurity that he hath found, and the ſum G A

of

of money in which they are bounden; commanding the Justices and Sheriff, that they surcease to arrest him, &c. or compel him to find sureties, &c. and if they have arrested him for that cause, and for no other, that then they deliver him, &c. See the form of the Writ in the Register. And if the party who ought to find surety, cannot come into the Chancery to find such surety; then his friend may purchase a *Supersedeas* in the Chancery for him, reciting the Writ of *Supplicavit*, &c. and that such a one and such a one, are bounden for him in the Chancery in such a sum, that he shall keep the Peace according to the Writ of *Supplicavit*, and the Writ shall be directed unto the Justices of the Peace and Sheriff, that they or some of them take sureties of the party himself, according to the Writ of *Supplicavit* for to keep the peace, &c. and that then they surcease to arrest him, and if they have arrested him for that cause, that they then deliver him.

B And sometimes the Writ of *Supplicavit* is made returnable into the Chancery at a certain day, and if it be so, then if the Justices do not certifie the Writ, nor the Recognisance, and the security which is taken, the party who sued the *Supplicavit* shall have a Writ of *Certiorari* directed unto the Justices of Peace, to certifie the Writ of *Supplicavit*, and what they have done thereupon, and the security which is found, &c. and so the party shall have such *Certiorari* unto the Justices of Peace, to certifie the security taken upon *Suplic.* although the Writ of *Supplic.* be not returnable in the Chancery.

C And so if a man demand surety of peace in the County against any man, he shall finde sureties in the County before the Justices of the Peace, &c. he who demandeth the security may sue a Writ of *Certiorari* directed unto the Justices of Peace, to remove the surety of peace and the Recognisance taken thereupon; and to certifie that Recognisance, and security taken under the seals of the Justices of Peace or one of them: And if the *Certiorari* be sued upon a Writ of *Supplicavit*, then the *Certiorari* shall rehearse the Writ of *Supplicavit*: And if it be sued upon surety demanded in the County without a *Supplicavit* sued, then the form of the Writ of *Certiorari* is such.

The K. to the Keepers of his peace in the County of L. and every of them greeting. Willing for certain causes to be certified of the tenor of a certain surety of the peace, lately before R. B. *and his companions, Keepers of our peace, and our Just. divers felo-*

nies, treſpaſſes, and miſdeeds in the County of L. to hear and determin aſſign. of R. of W. of that he any damage or hurt to B. of B, or any of our people ſhall not do nor to be done procure of the office taken, which ſurety of the peace with you remayneth, as is ſaid. We command you, that us thereupon in our Chancery under your ſeals, or of one of you diſtinctly and openly without delay you certifie, this Writ to us remaining, &c. Witneſſe, &c.

And when the Writ of *Supplicavit* is directed only to the Sheriff, then the *Certiorari* ſhall be directed unto the Sheriff only, to make return of the ſecurity found, if he have taken any ſecurity, *&c.* D

vide 12 H. 7. 3. by Fineux. By the Common Law, the Sheriff is Conſervator pacis.

And if a man finde ſureties to keep the peace againſt certain perſons before the Sheriff, *&c.* without any Writ of *Supplicavit* ſued by him who demandeth ſurety, and without the Writ uſed of ancient form, then the party who demanded the ſurety, may have a *Certiorari* unto the Sheriff, to certifie the ſecurety taken by him into the Chancery, *&c.* without making mention in the *Certiorari* of any Writ ſued forth to cauſe the Sheriff to take ſuch ſecurity; and by that *Certiorari* it ſeemeth, that the Sheriff *ex officio*, may cauſe the party to finde ſurety to keep the peace, if any one pray the Sheriff to have ſuch ſurety, and that the Sheriff bind them by Recognizance, and that he certifie the ſame into the Chancery by the *Certiorari*: for if he certifie an Obligation taken for ſecurity, that Certificate cannot make the Bond to be a thing upon Record, and the party cannot be bounden unto the King but by matter of Record, or unleſs that he will come into the Court, and confeſs the ſame to be his deed, and pray to have the ſame entrolled. And it ſeemeth that the Law is ſuch, becauſe that by the Common Law, the Sheriff is conſervator of the peace, and hath the keeping and the cuſtody of the County for the time that he is Sheriff; and the ſame appeareth by his Commiſſion and Letters Patents which he hath, the words of whoſe Patents are ſuch:

vide Lambert 10. 11. and now by the Statute of 34 H. 8. cap. 29. it is clear that bond ſhall not be taken.

Rex, &c. Commiſſimus vobis Conſtodiam, &c. and by that he takes his Authority, the which is a matter of Record, as the Commiſſion which is made to him who ſhall be Juſtices of the Peace, the which Commiſſion giveth them Authority, to hear, determin and inquire of all thoſe things, which are done againſt the peace: and by reaſon of that Commiſſion, they have power to binde men by Recogniſance, to keep the peace, upon complaint made unto them by any perſon: And

yet

yet there is not expreſs Authority given them by the Commiſſion to take that Recognizance, but it followeth, that becauſe they have authority to cauſe men for to keep the peace, and to hear and determin offences againſt the peace, they have power to binde men by Recognizance ſo to do; for every thing which they have done by virtue of their Commiſſion, ought to be taken as a matter of Record: And by the ſame reaſon the Sheriff, becauſe that his Patent is of Record, and is Conſervator of the peace in every place, every Obligation which he taketh for to keep the peace, ſhall be in Law taken for a Recognizance, and eſpecially when it is certified in the Chancery by *Certiorari*: But yet all the pleas that are holden before him in the County are not of Record, nor pleas holden before him in the County by Writ of Juſtices are not taken as matters of Record, for theſe pleas are holden before him by reaſon of the Courts which he hath by reaſon of his office, as the County and Hundred Court, *&c.* but the Leets and Tornes which are for the Common wealth, as for keeping of the peace, theſe are Courts of Record, and by conſequence for keeping of the peace the Sheriff is Judge of Record, and may take Recognizance for the Keeping of the peace *ex officio*, but if he ſo do and take Recognizance upon a Writ of *Supplicavit*, or other writ directed unto him to take ſureties for keeping of the peace, is it the ſtronger; but give credit to better reaſon, and therefore *quære* thereof. [81]

vid. 7 H. 4. 34 & Crompton, 125.

Writ de auxilio ad Filium ſuum Militem faciend. vel ad Filiam Maritand.

A THe form of the Writ is ſuch:

The K. to the Sher. &c. We command thee that juſtly, &c. thou cauſe A. to have reaſonable aid of his Knights and freeholders in thy Bailywick his eldeſt Sonne to be made Knight, or his eldeſt Daughter to marry, according to the form of the Statute of the Common Councel of our Realm of Engl. thereupon provided, &c.

B And a man ſhall not have this Writ before that his ſon hath accompliſhed the age of fifteen years, nor for to marry his daughter before ſhe be of the age of ſeven years, as appeareth by the Statute of *Weſt.* 1. *cap.* 35.

C And he who holdeth his Lands by a Knights fee ſhall pay 20s unto the Lord, to make his ſon a Knight, or for to marry his daughter, and no more.

And the Tenant who hath Lands of the yearly value of 20 lb. holden in Socage, he ſhall pay 20 s. unto the Lord to make his ſon Knight, and for to marry his daughter.

And he who holdeth by half a Knigths fee ſhall pay 10 s, and he who holdeth Lands in Socage of the value of ten pounds by the year ſhall pay 10 s. And ſo according unto the rate of the value of the Socage Land, and according unto the quantity of a Knights fee, he ſhal pay his Aid, and that by the Statute before mentioned.

But this Aid, to make the ſon a Knight, or to marry his D daughter, the Lord was to have by the Common Law of his Tenants, and the Statute puts it only in certainty. And the Lord may diſtreyn his Tenant for this aid, and avow for the ſame if he will; and he need not for to ſue this Writ unleſſe he will. And this Writ is directed unto the Sheriff, and he E may have an *Alias* and a *Pluries*, and an authchment againſt the Sheriff, if he will not aſſiſt the Lord to diſtrein his Tenants for this aid.

And the Kings Tenant in like manner ſhall pay aid unto F the King to make his eldeſt ſon a Knight, or for to marry his eldeſt daughter, *&c.* viz. every one who holdeth by a Knights fee 20 s, and he who holdeth by half a Knights fee 10 s, and ſo according to that rate.

And in like manner every one who holdeth of the King in Socage 20 l Land ſhall pay 20 s to make his eldeſt ſon Knight, and for to marry his eldeſt daughther. And he who holdeth 10 l Land in Socage ſhall pay 10 s, and that is appointed by the Statute of *Proditionibus*, *Ao* 25. *E.* 3. *cap.* 10. and the Statute ſetteth the aid certain, becauſe that before the ſaid Statute, the King would diſtreyn for more, to make his ſon a Knight, or to marry his daughter; But now the Statute appointeth that the King ſhall have no more.

And if the eldeſt ſon dieth before he cometh to the age of G fifteen years, or before the Lord hath levied the aid to make him Knight, then the Lord ſhall have aid for the younger ſon to make him Knight when he cometh to ſuch age, and yet he is not *primogenitus filius*, as the Writ doth ſuppoſe, but he is the *primogenitus* which is then alive, and that is ſufficient, for he ought for to be heir apparent. And ſo is it if the daughter dieth before the Lord hath levied aid of his Tenants for to marry her, then he may levy aid for the next eldeſt which is then living after ſhe is of the age of ſeven years.

And

H And by the Statute the Writ which ſhall be directed unto the Sheriff to levy ſuch aid for the Lord, ſhall mention that the ſon is of the age of fifteen years; and if it be for the daughter, it ſhall mention ſhe is of the age of ſeven years, otherwiſe the Writ is not good. But that form is not in the Regiſter, for it ſeemeth the Regiſter was made before the Statute of *Weſt.* 1. and therefore the Writ ought to be according as the Statute ordeyneth it.

I And if the Lord have aid to make his ſon Knight, or to marry his daughter, and dieth before he hath paid the ſame, then the ſon or daughter ſhall have an action of Debt againſt the fathers Executors for the money, and if the Executors have no goods of the Lord, then the daughter ſhall have an [83] action of Debt againſt the fathers heir, for ſo much of the See after. money as ſhe wanteth of that which her father had levied for 121 g. to marry his daughter: And that is by the Statute of *Weſt.*

A 1. *cap.* 35. And he who holdeth by grand ſergeanty or petit ſergeanty ſhall not pay aid to make the ſon a Knight, or to marry the daughter, as it appeareth, *M.* 11. *H.* 4. 32.

B And if the Lord doth levy aid for the marriage of his daughter, and afterwards marrieth her, then the daughter ſhall not have an action of Debt againſt the father Executers for the money levied, *&c.* But if the daughter be not married in the life time of the father, *&c.* by him, then the action doth lye. And ſo it ſeemeth that if the ſon be not made Knight in the life time of the Father, that he ſhall have an action againſt the fathers Executors for the money levied to make him Knight.

Writ de Scutagio habendo.

C THis Writ for Eſcuage, lieth in caſe where a man holdeth Lands of the King by Knights ſervice, to which he- Vide Fitz. 15 & 20. mage fealty and Eſcuage is appendant, and he who holdeth of any Lord by ſuch ſervice who holdeth over of the King by the like ſervices when the King maketh a voyage Royall in warre againſt the *Scots*, or againſt the *Welſh* in proper perſon, or by his Lieutenant, then he who holdeth by Knights ſervice, ought to go in perſon, or finde a man to go for him in the warre, with the King or his Depury in that warre for fourty daies at his own coſts; and if he do not go, nor finde a man ſo to do for him, then he ſhall pay for that default

and not doing of his ſervice, ſuch ſumme of money as ſhall be aſſeſſed by Parliament: for a Knights fee ſo much, and for half a Knights fee ſo much, and ſo according to that rate. And then he who holdeth by a whole Knights fee, ſhall pay ſo much for Eſcuage, that the Parliament doth aſſeſſe that a whole Knights fee ſhall pay if he hath not done the ſervice: And he who holdeth by half a Knights fee, ſhall pay according to the rate; and thoſe who have done their ſervices, and gone in the war, ſhall not pay any thing. And that ſum of money is called Eſcuage. *Servitum Scuti.*

Vide 1 Eliz. Dy. 329. that he who holdeth by the moytie of a Knights fee, holdeth by Knights ſervice, and ſo it ſhall be intended if it be not found to the contrary.

And if a man holdeth of the King by Knights ſervice, and to go with him in his warre, *&c.* Then that Lord ſhall have Eſcuage of his Tenants who hold of him by the like ſervice, but the ſumme which he ſhall have and levy ought to be aſſeſſed by Parliament (as afore is ſaid) before he diſtreyn for the ſame.

And if a man hold of any Lord to guard his Caſtle in time of war, or to plow or harrow in the time of invaſion of enemies, the ſame is Knights ſervice: but it ſeemeth that for thoſe Lands he ſhall not pay Eſcuage if they do not their ſervices, but the Lord ſhall diſtreyn them for not doing the ſervice, and ſhall have recompence for the ſame. So that none ſhall pay Eſcuage but only thoſe who hold by ſuch ſervices to go into the warre, or to finde a man to go, *&c. tamen Quære.*

And if he who holdeth of the King by Knights ſervice to go with the King in warre, do his ſervice, *&c.* Then he ſhall have a Writ for him directed unto the Sheriff to have Eſcuage of thoſe who hold of him by the like ſervice. And the form of the Writ ſhall be ſuch:

The K. to the Sher. &c. Becauſe our beloved and truſty W. D. *hath his ſervice with us by our precept in our Army of Scotland the firſt year of our reign.* Or thus, *Was with us by our precept, &c. the year, &c. as by the Rolls of* A. *Conſtable to our Army foreſ. to us is manifeſt.* Or thus, *Hath made fine with us for his ſervice in our Army of Scotland, the year, &c. as by certificate of our Treaſurer and Barons of the Exchequer in our Chanc. by our mandate ſent to us is manifeſt; We command thee that the ſame* A. D. *thou cauſe to have Eſcuage of the Knights fees which of them then they held in thy Bailiwic. viz. eight ſhill. the ſheild for the Army foreſ. and this by no means omit thou. Witneſs, &c.*

And by that it appeareth that if the Kings Tenant goeth with

with the Kings Lieutenant or his Deputy in warre, that the Conſtable of the Hoſt ought to certifie the ſame into the Chancery, before the Kings Tenant ſhall have a Writ to levy the Eſcuage of his Tenants; and if the Kings Tenant do agree with the King for his going, *&c.* then the King ought to be certified thereof in the Chancery by the Treaſurer and Barons of the Exchequer, before that he ſhall have a Writ to levy the Eſcuage of his Tenants.

H And by that it appeareth, That if the Kings Tenant do not go in the voyage, nor agree with the King for that voyage, that then he ſhall not have Eſcuage of the Tenants nor diſtreyn the Tenants for the ſame.

I And if a man holdeth of the King by Soccage, and others hold of him by Knights ſervice, and the King maketh a voyage in warre into *Scotland* or *Wales*: Now it ſeemeth he ſhall not have Eſcuage of his Tenants if he goeth not with the King in the voyage: But if he goeth with the King or his Deputy, or agree with the King for that voyage, then it ſeemeth he ſhall have Eſcuage of his Tenants, and ſhall have the aforeſaid Writ. And it is not materiall whether he hold by Knight ſervice, or in Soccage.

K And if there be Lord, Meſne, and Tenant, and each holdeth of the other by Knights ſervice, if the Tenant go into *Scotland* by the Kings common Summons, Then the Meſne ſhall not pay Eſcuage, *quod conceditur per Curiam. Trin. 5. H. 5.*

A And if a man holdeth lands by ſuch ſervice, that he ſhall pay a penny, or a pair of ſpurs when Eſcuage runneth, *&c.* the ſame ſhall not properly be Eſcuage, as it appeareth in 15 E. 2. title avowry in the Abridgements. Vide. Title Avowrie, 215.

B And *vide* 19 R. 2. that garder of a Caſtle doth countervail Eſcuage, ſo as his heir ſhall be therefore in ward, and ſo of grand ſerjanty; and yet it ſeemeth they ſhall not pay Eſcuage. *qd. vide.* in title Gard. See before 83 E.

C And in title *Quare impedit* in the abridgements that Eſcuage certain doth not make Knights ſervice, *Hil. 5 E. 3.*

D And if there be Lord, and many ſeveral Meſnes, and Tenants, and each holdeth by ſeveral Knights ſervice, If the tenant peravail of the Land doth the ſervices, and goeth with the King in warre, *&c.* the ſame ſhall excuſe all the other Meſnes, for for one Land but one ſervice can be demanded, *viz.* to go, or to finde a man to go, *&c.* and ſo the Meſne paramount him is excuſed, becauſe that the ſervice is done by the Tenant, *&c.*

And

And when the King will levy Eſcuage of his Tenants he uſeth to grant a Commiſſion to certain perſons: And the form of the Commiſſion is ſuch:

The King to his beloved, &c. We have aſſigned you our eſcuage of our Army of Scotland, *the firſt year of our reign to levy and collect in the Coun. of* K. *as well within the liberties as without, of the Knights fees which then were held of us in chief, or of the eſcheats and honors in our hand now being, or of the perquiſite of our progenit. or of us, as of the Knights fees which are held, of Arch biſhopricks, Biſhopricks, Abbies, Priories, and other dignities or offic. Eccleſiaſtic. whatſoever, which then in our hand were, and of the inherit. of our heirs within age, and in our Wardſhip being, viz. 40 ſhill. of every fee for our army aboveſ. ſo that all the monies thence riſing, ye have at our Exchequer particularly ſpeedily as you may, us there to be paid: and becauſe many of the fees foreſ. to the hands of divers have come, as well in the times of our progenitors, as of us ſome viz. by diſcent hereditary, as well into parts as in other manner, and ſome by alienation thereof diverſly made, we aſſign you to enquire by the oth of honeſt and lawfull men of every hundred in the Coun. foreſ. as well of Knights girt with the ſword as of others, by whom the truth of the thing better known may be, who held Knights fees in time foreſ. in the ſame Coun. or any part of the ſame fees, as of our Crown of* England *or of the perquiſite of our progenitors and of us, and of the Archbiſhopricks, Biſhopricks, Abbies, Priores, and other dignities, and offices foreſ. and alſo of the inheritances of the heirs foreſ then within age being, and how many fees, and what parts of a fee every ſuch tenant then held, and in what town diſtinctly, and who were the anceſtors of thoſe who hold by deſcent hereditary, and who in another manner, and what heirs were within age, and in our Wardſhip, and what Archbiſhopricks, Biſhopricks, Abbies, Priories, and other dignities whatſoever, or offices that time were vacant, the cuſtody of the temporals of which to us belong, and therefore you in the faith in which you to us are held, firmly injoyning we command that at certain daies the premiſes you do, and fulfill in form foreſ. and the inquiſitions upon the premiſes diſtinctly, and openly made which of the ſingular fees and of the names and ſurnames of thoſe who ſeverally ſomtime held them, while whole they were holden, and of thoſe who after them ſucceſſively held, after partitions of them betwixt heirs parceners, or by alienations as foreſ. fit mention make, have at the Exchequer foreſ. about the*

the feaſt of Eaſter next to be, under the ſeals, and the ſeals of them were made, we command alſo the Sher. of our Coun foreſ. that at a certain, &c. to come he cauſe ſo many and ſuch honeſt and lawfull men, as well Knights with the ſword girt, as others of his bailiwic. as well within the liberties as without, by whom the truth of the thing better known may be and inquired, and that to you in the premiſes be obeyeth, and intendeth, we command alſo our Treaſurer, and Barons of the Exchequer, foreſ. that ſuch fees at the Exchequer foreſ found, the Lands and tenement in the County foreſ. concerning, to you ſpeedily in writing they ſend for evidence, and for the greater expedition of the premiſes. Inteſtim. &c. Witneſs, &c.

And a *Venire facias* ſhall be ſent unto the Sheriff cloſe upon this Commiſſion, and another Writ cloſe unto the Treaſurer and Barons, *&c. quod feoda mittant*, &c.

F And now it appeareth by this Commiſſion that the King ſhall have Eſcuage of the Tenants who hold of theſe Lands or Mannors which the King hath in his hands, by reaſon of ward, or by reaſon of the vacancy of a Biſhoprick, *&c* Or if he have an eſtate for years in the Seignory, he ſhall have Eſcuage of the Tenants, *&c.*

And ſo ſhall another Lord have, if he have a term for years or for life in the Seignory if he go in voiage with the King in warre into *Scotland*, &c. he ſhall have Eſcuage then of the Tenants which hold of him by Knights ſervice, for the Tenant is not bound to go, but for to defend his Lord; or to finde a man for to defend him; and then if the Lord do not go into the warre, the Tenant is excuſed.

19 E. 3. Br. Tenures 63. Leſſee for life may do Eſcuage.

6 E. 2. Gard. 122. he ſhall have the ward, becauſe it is a profit, he ſhall have Eſcuage, becauſe it is a ſuit real, by *Wilbe. Scrope cont.*

Writ de Securitate inveniend. quod ſe non divertat ad partes exteras, ſine licentia Regis. [85]

A BY the Common Law, every man may go out of the Realm, to merchandize, or on pilgrimage, or for other cauſe he pleaſeth without the Kings leave, and he ſhall not be puniſhed for ſo doing: But becauſe every man is of right for to defend the King and his Realm, therefore the King at his pleaſure by his Writ may command a man that he go not beyond the ſeas, or out of the Realm without licence, and if he do the contrary he ſhall be puniſhed for diſobeying the Kings command; and it ſeemeth, that this command may be by

vide 1 Eliz. Dyer 163.

by the Kings Writ under the great Seal, as alſo under the Privie Seal, or his Signet; for by the Law the ſubject is bounden to take notice of every of the Kings Seals in ſuch caſe, as well as of the Great Seal.

And there are two manners or forms of ſuch Writs, one is B directed unto the party, and the other unto the Sheriff, commanding him that he cauſe the party to finde ſecurity that he ſhall not go out of the Realm without the Kings licence, and the firſt Writ is ſuch:

The K. to I. of B. greet. Becauſe we are given to underſtand that thou toward the parts beyond ſea without our licence privately deſtineſt thy ſelf to divert, and many things to us and our Crown prejudicial there to proſecute thou intendeſt, in contempt and prejudice of us, and againſt our Proclamations and inhibitions thereupon often made, we ſuch contempt and prejudice to meet with willing, thee ſtrictly under the peril incumbent we forbid, that toward the parts beyond ſea without our ſpecial licence in any manner thou thy ſelf diverteſt not, nor any thing there to proſecute thou attempteſt or to be attempted cauſeſt, which to our or our ſaid Crowns prejudice may fall out in any manner, nor any there ſend for that cauſe. Witneſs, &c.

12&13. Eliz. Dyer 296. &c. And alſo the King by his Proclamation may inhibit his C ſubjects, that they go not beyond the Seas, or out of the Realm without Licence, and that without ſending any Writ or Commandment unto his ſubject, for perhaps he cannot finde his ſubject, or know where he is, and therefore the Kings Proclamation is ſufficient in it ſelf. And if the ſubject do contrary thereunto, it is a contempt, and for ſo doing he ſhall be fined to the King.

The other form of Writ directed unto the Sheriff is ſuch:

The King to the Sher. of S. greet. becauſe we are given to underſtand that A. B. Clerc. toward the parts beyond ſea, many things there to us, and many of our people prejudicial and hurtfull there to proſecute to paſſe over purpoſeth, we his malice to reſiſt willing in this part, we command firmly injoining that the foreſ. A. B. before thee corporally to come thou cauſe, and him ſufficient mainpernors to finde, who him mainpriſe will, under a certain pain upon them by thee reaſonably to be impoſed for which us anſwer thou wilt. Or thus, *And him* A. B. *ſuffic. ſurety to finde under the pain of one hundred pounds to our uſe, to be paid, or every of them under the pain, &c. that he towards the parts beyond ſea without our licence ſpecial himſelf divert not,*

not, or any thing there proſecute, or to proſecute or attempt to do preſumeth, which to our contempt or dammage of our people may fall out, nor one or more thither ſhall ſend for that cauſe in any manner compell thou, and if this before thee to do he ſhall refuſe, then him A. B. *to our nex Gaole commit, in the ſame ſafely to be kept, untill this freely do he will, and when that ſecurity thou thou haſt taken, us thereupon in our Chanc. under thy ſeal diſtinctly, and openly without delay certifie, without delay this Writ to us remitting. Witneſſe*, &c.

E And this Writ may be directed unto Juſtices of the Peace, or unto the Sheriff, or unto both, and the form may be as the Writ of *Supplicavit*, which is directed unto the Juſtices of the Peace, and unto the Sheriff, to cauſe him to finde ſureties, *&c.*

F And every one upon a ſurmiſe made unto the Chancellor, may ſue forth this Writ for the King; and then the party againſt whom it is ſueth may come into the Chancery, and obtain licence by Letters Patents, or by Letters under the privy Seal or privy Signet: And the licences are good although they be not under the great Seal, becauſe thoſe Letters will excuſe his contempt. And ſuch licences are called Paſſeports. And now by the Statute of 5. *R.* 2. *cap.* 2. it is ordained, That no perſon paſſe out of the Realm without the Kings leave, but thoſe who are excepted in the Statute, and therefore ſee the Statute.

Writ of Treſpaſſe.

THere are two manner of Writs of treſpaſſe, one is of a Treſpaſſe which is vicountiell, and is directed unto the Sheriff, and is not returnable but ſhall be determined in the County before the Sheriff; and in this Writ he ſhall not ſay *Quare vi & armis*, &c, but the form of the Writ is ſuch:

The K. *to the Sher of* Linc. *greet. Plained hath to us* A *of* B, *that* C *upon him* A *at* N *aſſault made, and him beat, wounded, and evil intreated and other things enormous to him did, to the no ſmall dammage of him* A. *and grievance, and therefore we* [86] *command that that plea thou hear, and after thereupon juſtly to be deduced thou cauſe, that no more a clamour thereof we hear, for defect of Juſtice. Witneſſe*, &c.

And by this Writ the Sheriff ſhall hear and determine that treſpaſſe, *&c.* by enqueſt according to the Common Law, and this Writ is in effect a Commiſſion unto him, and he may

may declare upon this Writ unto his dammage of 20ſ or more.

And another form of Writ for goods is ſuch :

The King to the Sher' &c. Plained have to us A *and* B *exe-* A
tors of the teſtam. of C. *that* E. *and* F. *the goods and chattels which were his* C *to the value, &c. under the cuſtody of them Executors at* N. *found, took and carried away, and other things enormious to them did in retard. of the execut. of teſt. foreſ. and therefore, &c. that no more, &c.*

And a man may ſue other Writs of Treſpas upon the Caſe B
in the County before the Sheriff, and the forms of the Writs are ſuch :

The King to the Sher, &c. Plained hath to us A, *that whereas* B *one hundred his Sheep to the foreſ* A *upon his Land and paſture of* N *for one year to abide, or to be kept under certain conditions delivered, the foreſ.* B. *thoſe Sheep there upon the Land of him* A. *being, without the licence and will of the ſame* A *within the term foreſ. took and led away, and other things, &c. to the dammage, &c.* By which Writ it appeareth, That he cannot take back the Cattell again if the plaintiff perform the conditions.

If a man borrow a certain ſumme of money, and doth C
pawn goods for the ſame, and he offereth the money again unto the party, and prayeth that the pawn may be delivered back to him, and the other refuſe to do it, he ſhall have an Action of treſpaſſe upon the Caſe in the County before the Sheriff, to determine the matter, &c.

If a man doth deliver unto another a Bull, or Oxen, or D
Cows to make his benefit of them for a certain time upon condition, If he againſt the will of him to whom they were delivered take them back again within the time, he ſhall have an Action of Treſpaſſe againſt him, directed unto the Sheriff to determine that Cauſe.

If a man do diſtrayn Kine which are with Calf, and im- E
pound them againſt Law for ſo long time that they caſt their Calves, Then he ſhall have a ſpecial Writ directed unto the Sheriff, rehearſing the ſpecial matter to end the ſame before the Sheriff in the County.

And ſo if a man have a Saltpit by the ſea coaſts, and another F
erecteth a wall betwixt the ſea and the Saltpit, if the other perſon throweth down the wall, for which the ſea-water overfloweth the Saltpit, he ſhall have a ſpecial Writ directed unto the Sheriff to end the matter in the County.

And

G And ſo for every manner of Treſpaſſe done, a man may chuſe to have ſuch a Writ directed unto the Sheriff to end the matter before him in the County, or to ſue a Writ unto the Sheriff, returnable in the Common Pleas, or of the Kings Bench.

H And if the Writ of Treſpaſſe be returnable, then the Writ ſhall be of another form, for then theſe words, *vi & armis*, ſhall be in the Writ, and if it want thoſe words, the Writ ſhall abate; if they be not Writs of Treſpaſſe upon the Caſe, which Writs of Treſpaſſe ſhall not have the words *Quare vi & armis* in the Writ, although they are returnable in the Common Pleas, or Kings Bench, and if they have the words *Quare vi & armis* in the Writs, it ſhall be good cauſe to abate the Writs: And the form of a Writ of Treſpaſſe returnable in the Kings Bench is ſuch:

I *The K. to the Sher'* &c. *If* A *ſhall* &c. *then put by good and ſafe pledg.* B. *that he be before us in the Octav. of* S. Mich. *wheresoever we ſhall be in* England. And if it be returnable in the Common Pleas, then thus. *Before our Juſtic. at Weſt. in the Octav. of* S. Mich. *to ſhew why with force and arms upon him* A *at* N *aſſault be made, and him beat wounded, and evil intreated, ſo that his life was deſpaired, and other things enormous to him did, to the grievous dammage of him* A, *and againſt our peace, and have there the names of the pledg. and this Writ. Witneſſe*, &c.

K And if a man do impriſon another, then the form of the Writ of Treſpas is; *To ſhew why with force and arms upon him* A *at* N *aſſault be made, and him wounded, impriſoned, and evil intreated, and other*, &c.

And it is not materiall whither he be wounded or not, for the form of the Writ is ſuch: but the damages ſhall be increaſed for the ſame if he do recover; and if he do impriſon him untill he pay a fine for his deliverance, then the form is; *Why with force and arms him* A *at* N *he took, impriſoned and evill intreated, and him in priſon there untill fine by ſo much for his delivery to be had, with the foreſ.* B *he had made, detcined, and other things enormous to him did*, &c.

And a man may have one Writ of Treſpas for divers Treſpaſſes, *&c.* as for breaking of his Cloſe, cutting of his Trees, fiſhing in his Ponds, beating of his ſervants, and taking of his goods and chattels, and all in one Writ; and for cutting of his wood, and for taking his young Hawkes; and the form of the writ is: *Why with force and arms the wood of him*

him A *did he enter, and three chickens of his Hawkes of ſuch price lately in the ſame wood reſting took and carried away, and other enormous*, &c. And by this writ it appeareth that the property of the Hawkes are in him who hath the Land, by the word (*ſuorum*) in the writ.

And for hunting in a Warren the form is; *Why*, &c. *the* M
[87] *Warren of him* A *at* M *did he enter, and in it without his licence and will, chaſed, and Hares, Conies, Pheaſants and Partriges took and carried away*, &c.

And if a man hunt and take another mans Conies in his A
cloſe which is no Warren, then the form of the Writ is; *Why*, &c. *the Cloſe of him* A *at* N *did he break, and in it without his licence and will*, &c. *chaſe, and ſo many Conies of ſuch price take and carry away*, &c.

3 H. 6. 55. 26. And by this Writ it appeareth, that he who hath the Land hath no property in the Conies. And ſo of a Park.

Why, &c. *the Park of him* A. *at* N. *did he break, and in it*, &c. *chaſe, and beaſts took and carried away.* Or thus: *Why*, &c. *the herb of him* A. *at* N. *lately growing, or the Corn of him* A. *at* N. *lately growing to the value of Ten pounds, with certain beaſts did he feed up, tread down and conſume, and other*, &c. And need not ſay in the Writ, *Why*, &c. *the cloſe did he break*, &c. *and the herb*. &c.

And there is another form of Writ of Treſpas. *Of his ſoil* B *digged, and Sea-coles carried away.* And another form of Writ C in the Regiſter. *Of his horſe and cattell arreſted without cauſe, untill fine he ſhould make*, &c. *Of his houſe broke and timber* D *carried away*, &c.

And the Writ of Treſpas for Executors for goods taken out E of their poſſeſſion, which is ſuch;

The K. &c. *If* A B. *Executors of the Teſtament of* C *ſhall*, &c. *then put*, &c. *why four Oxen which were his* C, *of the price of one hundred ſhil. under cuſtody of them Executors at* N *found he took, and carried away, and the Corn of the foreſ.* C. *which was there growing did he mow, and that Corn and other goods and chattels which were his the ſame* C, *under cuſtody of the ſame Executors there found he took, and carried away, and other things enormous to him did, in retarding the execution of the teſtament foreſ. and againſt our peace.*

And if an Abbot and his Monks break the ſeal of any wri- F ting which they have made unto another perſon, the party ſhall have a Writ of Treſpas againſt them, in ſuch form:

The

The K. &c. *If* A. *ſhall*, &c. *then put the Abbot of* C. *and* I. *and* D. *commoignes of the ſame Abbot*, &c. *why*, &c. *a certain writing of him* A. *with the common ſeal of the foreſt-houſe ſealed, by which the ſame Abbot, and Covent of the ſame place, were bound the ſame* A. *victual, and apparel, and all things neceſſary to finde, untill the ſame Abbot and Covent, the ſame* A. *to a man twenty pounds of Land or rent having ſhall marry, at* L. *found, maliciouſly broke.*

G And alſo a man may have a Writ of Treſpaſſe for fiſhing in his ſeverall piſcary, and for cutting of his graſſe, and for plowing of his Land, or for ſhearing of his Sheep, and all in one Writ.

And another form of Writ for mowing of his Corn, and cutting of his graſſe, and felling of his woods, and eating of his Corn and paſtures, and all in one Writ.

H And alſo an other Writ of Treſpaſſe made unto a woman before coverture, which is ſuch:

If A. *and* B *his wife ſhall*, &c. *then put*, &c. *why*, &c. *a certain forcer of her* B. *at* N. *found he broke, and a certain writing obligatory in the ſame forcer found took and carried away*, &c. *to the grievous damage of them* A. *and* B. *againſt our peace.*

I And another Writ in the Regiſter, *Of a Ship taken away, and chattels carried away.*

K And another Writ of *Corn and graſſe of vineyards fed up.*

And another Writ of *Corn and graſſe of Copſies fed up*, &c.

L And another Writ of a *Pool broken*, thus: *Why*, &c. *a certain Pool at* R. *maliciouſly he broke, by which the water from the ſame Pool running, the fiſh-pond of him* A. *there ſo much overflowed, that by the courſe of that water, and inundation foreſ. the fiſh in the ſame fiſh-pond being to the value of one hundred pound, came forth, and other*, &c.

By which it appeareth, That he ſhall have a Writ of Treſpaſſe *vi & armis*, becauſe he cauſeth the water to run out of his pond, by which the fiſh there go away.

M And there is another Writ *De equis abductis*, and goods and chattels unto the value of 5^l^ and 100 ſhill. of his money in money told, *ibidem invent capit*, &c.

N And there is another Writ of Treſpaſſe, againſt theſe who lye neer the plaintiffs houſe, and will not ſuffer his ſervants to go into the houſe, nor the ſervants who are in the houſe to come out thereof; and for taking and impounding his cattell, and not ſuffering him for to ſue a Replevin, &c. And the form of the Writ is ſuch:

The K. &c. If &c. put, &c. why with force and arms the manſion of him A *at* H *did beſet, and his men and ſervants without the houſe foreſ. being, the ſame houſe the ſervice and commodity of him* A *there to do to enter, and certain other his men and ſervants there being, the foreſ. houſe the land of him* A *there to till to go out of hand not permit not, by which one hundred acres of the land of him* A *untilled have remained, and the ſame* A *the profit of his land foreſ. to the value of twenty pounds. and the ſervice of his ſame men and ſervants for a great time hath loſt, and alſo the beaſts of him* A *there impounded. and thoſe there impounded hath held, not permitting thoſe to the ſame* A *accord. to*
[88] *law and cuſtom of our Realm to be replev. and other things enormous to him have done,* &c.

And there is another Writ of an houſe broke, and priſon, taken away, thus: *Why with force and arms the houſe of him* A *at* N *in which the ſame* A *a certain* H. *of* C. *a Scot, by him in warre taken as his priſoner, untill to him of one hundred pounds by which the ſame* H *his ranſom with the foreſ.* A *for ſaving his life had made, ſhould be ſatisfied, detained, and him* H *took and lead away, and other things enormous,* &c. A

2 & 3. P & Ma. Dy 121. And note that the form of the Writ for a live thing, as B horſes, or men, or ſuch like, is to ſay, *ceperunt & abduxerunt*; and for a dead thing to ſay *ceperunt & aſportaverunt*, &c.

And there is another Writ of Treſpaſs, If a man take another and impriſon him untill he make oath that he will not trouble or impriſon him for a Treſpaſſe done to him before, or impriſon him untill he hath made unto him a releaſe of all actions. C

And if a man taketh his villain and puts him in the ſtocks, and others come and break the ſtocks and ſet him out, he ſhall have an action of Treſpaſſe, and the form is, *Why whereas* R. S *his villein and fugitive in his manner at* K. *for that that to the ſame* R. *he was not juſtifiable, had taken, and him there into the ſtocks for chaſtiſ. as well he might, had put, the foreſ.* &c. *the foreſ. ſtocks by force and arms broke, and him* S. *took and lead away,* &c. D

There is another form of Writ, thus: *Why by force and arms,* &c. *a certain ditch in* L. *with earth and mud he ſo much filled, that the water from the ditch foreſ. iſſuing the corn of him* W. *in ſheaves in his barn there being overflowed, by which the corn foreſ. to the value of one hund. ſh. rotted, and his trees there lately growing to the value of* 40. *ſhill. by the roots plucked up, and car-* E

ried

vied away, and his corn there lately growing, with his beasts fed, trod down and consumed, &c. And by the first of these Writs appeareth, that that is an Action of Trespasse upon the case, and the residue a common Action of Trespasse.

F And if a man draw wine out of the vessels, and put water in the same to fill them up again, he shall have an action of Trespasse in this form, *Why with force and arms*, &c. *40 flagons out of a certain tun of wine of him* A *of the price of four pounds in the ship of the fores.*], *at* S *put from them to* S *to be brought hath he drawn out and that tunne with sea water filled, so that the residue of the wine putrid became, and totally perished, and other things*, &c.

G And another Writ of the fish of his piscary, and herb fed up, and land digged, thus: *Why with force and arms in the free fishing of him* A *at* N *hath he fished and his herb there lately growing hath he cut down, and in his land likewise there digged, and the land therefore cast up, and his herb fores. and fish of the piscary fores. to the value of* 100. s. *taken*, &c.

H And it appereth here, that there are divers manner of forms of fishing in his fishpool. One Writ is, *Why* &c. *in the vivaries of him* A *did he fish*, &c. Another Writ is, *Why*, &c. *in the several fishing of him* A *did he fish*, &c. And the third Writ is as before, *Why in the free fishing of him* A *at* N *did he fish*, &c.

I And a man shall have a Writ of Trespasse for breaking of his house, and cutting of his trees, and for fishing is his ponds, and for taking of his goods and chattles, and for taking of his plough cattell, and impounding of them, and for taking of his doves out of his dove-house; and the form is such; *Why*, &c. *the house of him* A *at* N *did he break, and his trees there lately growing cut down, and in his vivaries there fished, and the fishes thence and trees fores. as also other his goods and chattels to the value of one hundred shill. there found took, and carried away, the beasts of his plough there took and impounded, and those so long impounded detained, that fourty acres of Land of the same* A. *for a great time untilled remained, and his pigeons of his dovecote there with nets and other engines took, and carried away, by which the same* A *the flight of his dovecote totally hath lost, and other things*, &c. And by this Writ appareth that a man shall have an action of Trespasse for taking of his plough cattell, and shall joyn the same in a Common action of Trespasse with other Trespasses, and also that he shall have

C 5. part. 108 in trespas the def. as to one thing justified, and pleaded not guilty to another, and the Jury found one issue and taxed damages entirely. 22. Ed. Dy. 369.

an action for taking of his doves, &c.

And a man may have a Writ, *Of his cloſe broke and of his* K
corn in the ſheaves, and hay to the value of one hundred ſhill. fed up, &c. Or of eating of his hay only, &c. *Or why the ſedge of him* R. *to the value of one hundred ſhill. at* N. *lately grow. did be mow down, and carry away.* Another, *why*, &c. L
the mill ſtone of him the Prior, of the price of fourty ſhill. at N. *did be break, and goods and chattels*, &c.

2 & 3. Ma. Dy 121. 17 E. 3. 41. And by this it appeareth, that if it be a live thing or dead M thing for which the action is brought, it is not material whether he ſay *Preiii*, &c. or *ad valentiam*, &c.

And another Writ of a mill pool broken in two Towns thus: *Why*, &c. *the mill pool of him* R. *of* B. *at* R. *and* S. *hath be broke, by which the water in the ſame pool wholly iſſued out, and the ſame* R. *the profit of his mill foreſt, to the value of one hundred ſhill. loſt, and his goods and chattels*

And another Writ, *of houſes and cattell burnt*, &c. N

And another Writ, *of ſheep ſtorn and wool carried away*, &c. O

And another for taking him and impriſoning him in one P
place, and from thence carrying of him to priſon in another
[89] place, and there detayning him in priſon: And another Writ for taking of his Sheep in one place, and impounding of A
them in another place, untill he hath paid a fine.

And another Writ for breaking of his ſluces, in ſuch B
manner.

Why, &c. *the ſluce of the mill pool of him the Abbot, and his Park there at* S. *did be break, and in it without licence*, &c. *and his trees*, &c. *and in his ſeveral piſcarie*, &c. *and the fiſh thence, and trees foreſt to the value of one hundred ſhill. as alſo beaſts of the foreſt. Park took* &c.

Another Writ, *Why with force and arms the places of him* A C
beyond the ditch of N. *for the ſafety of his Lands at* C. &c. *he broke, and the timber thereof to the value of one hund. ſhill. into ſmall parts cut, ſo that by ſuch fraſture, the Lands and meadows of him* A. *there overflown were, and the ſame* A. *the profit of the Lands and meadows foreſt to the val. of 100 s. totally hath loſt, and other*, &c.

And another Writ, if a man doth impriſon his villein and D
ſet him in the ſtocks for ſome offences and another man doth ſet him at large, the Lord ſhall have an action of Treſpaſſe for breaking up the ſtocks, and for ſetting his villain at large.

And

E And another Writ if a man be riding upon the way, and another man ſtriketh his horſe, by which the rider falleth and is hurt; he which is caſt off his horſe ſhall have Treſpaſſe againſt the other.

F And another Writ for putting out another mans eyes thus; *Why with force and arms, the right eye of him* W. *at* N. *he thruſt out, and other,* &c.

G And the Maſter of an Hoſpitall ſhall have an action of Treſpaſſe for taking of goods in the time of his predeceſſor. And the form of the Writ is ſuch: *The* K. &c. *if* W. *of* N. *Warden of the Hoſpitall of* S. Michael *of* C. *ſhall,* &c. *then put,* &c. *why with force and arms the goods and chattels of the foreſ. Hoſpital to the val. of one hund. ſhill. in the time of* J. *of* C. *lately Warden of the Hoſpital foreſ. predeceſſor of the foreſ. Warden at* R. *found he took, and carried away,* &c. *and other,* &c. See 91. k.

And the like Writ for an Abbot or Prior, and in the end of the Writ he ſhall ſay, *To the deterioration of the houſe and Church of him the Abbot*: and ſo it ſeemeth it ſhall be in the end of the Writ for an Hoſpitall.

H And another Writ for an Abbot thus: *Why with force and arms, the doors and houſes of the houſe and Church of him the Abbot at* L. *did he break, and the corn of the houſe and Church foreſ. in the time of the foreſ. Abbot there growing to the val.* &c. *with certain beaſts feed up, tread down, and conſume, and the goods and chattels of the ſame houſe and Church in the time foreſ. to the val.* &c. *there found took,* &c. *and other,* &c.

And another Writ for a Treſpaſſe done in the time of vacation of an Abby or Hoſpitall, *Why with force and arms the goods and chattels of the houſe and Church of him the Abbot of* C. *in time of the vacancy of the Alby foreſ. to the val. of one hund. ſhill. found, took and carried away,* &c. *and other,* &c. *to the deterioration,* &c. *and againſt the peace,* &c.

K And another Writ of Treſpaſſe, *Why with force and arms, the warren of him* A. *at* C. *he entred, and in it chaſed, and his wod likewiſe there entred and three his chickens of bankes in the ſame wood lately neſting, of the price of* 20 *ſhill. and other his goods and chattels to the val. of one hundred ſhill. there found, as aſſobares, conies, and partridges in the warren took,* &c.

L And another Writ of Treſpaſſe. *Why with force and arms one hund. ſheep of him* A. *at* T. *found, with certain dogs chaſed, thoſe dogs to bite the ſheep foreſ ſo much inciting that by that chaſing and biting of the dogs foreſ. the ſheep much the worſe were,*

and great part of the ſheep births abortive made, and upon T. his ſervant there aſſault be made, &c. by which, &c.

And another Writ, *of his hogs chaſed, ſo that they died, &c.*

And if a man do incite or procure his dog to bite any man, he ſhall have an Action of Treſpaſs for the ſame.

And if a man fill a ditch with mud and earth, which had N uſed to be a water courſe, for which another mans Land is drowned, *&c.* he ſhall have a Writ of Treſpas *Quare vi & armis*, and the Writ is ſuch: *Why with force and arms a certain ditch at T. by which a certain water runneth, there with earth and mud ſo much he filled, that that water in its ancient courſe hindred, 20 acres of the Land of him there with ſeveral corn ſowed overflowed, by which the ſame A the profit of his Land foreſ. tota" y hath loſt, &c. and other things enormous, &c.*

And if a man diſtreyn Cattell and carrieth them into un-N known places, the party ſhall have an action of Treſpaſs *Quare vi & armis*, for the diſtreyning of them, and the Writ is ſuch:

Why with force and arms the beaſts of him A at N took he, and to places unknown chaſed, ſo that to the ſame A according to law and cuſtom of our realm to be replev. found they could not be, and other, &c.

There are divers Writs of Treſpaſs founded upon Statutes, O whereof ſome do follow:

The K. &c. If A, &c. then attach B. &c. that he be before us &c. to anſwer the foreſ. A why C the wife of the foreſ. A he ravi-ſhed, and her with the goods and chattels of the foreſ. A to the val. of one hund. mark lead away, and her yet detaineth, and other, &c. to the grievous dammage. &c. and againſt the form of the Statute in ſuch caſe provided, &c. Witneſſe, &c.

Another Writ: *Why with force and arms the beaſts of him P A at N in thy Count. he took, and thoſe from thy Coun. to P in the Coun of Kent chaſed, and impounded, and thoſe there impounded detaineth, againſt the law and cuſtom of our realm, and againſt our peace, and have, &c.*

[90] Another Writ of Treſpaſs, *That diſtreſſe, &c. be not out of R the fee, or in the Kings way*; Thus, *If A ſhall, &c. there pa-, &c. that he be, &c. before, &c. Why whereas of the common Councel of our Realm it is provided, that no man may diſtreſſer make for any cauſe out of his fee, nor in the way royal, or common ſtreet, unleſs of us and our Miniſters ſpecial authority to this having, the foreſ. B who our Miniſter is not, as is ſaid, out of his fee*

at N *the beaſts of him* A *againſt the form of the proviſion foreſ. &c. and have, &c. otherwiſe in the high way thus. The beaſts or goods and chattels of him* A *in the royal way took and impounded, and thoſe yet impounded detaineth againſt the law and cuſtom of our Realm. &c. and againſt our peace, &c.* Or thus, *And the beaſts foreſ. long impounded detaineth, againſt the law, &c. and againſt our peace, &c. and have, &c. And thoſe beaſts to the ſame* A *in the mean time to be delivered cauſe thou. Witneſſe, &c.*

B Another Writ of Treſpaſſe againſt him who diſtreyneth a man by his plough cattell or by his ſheep. *To ſhew why whereas to the common profit of our Realm it is appointed, that no man of the ſame Realm may be diſtreyned by beaſts of his plow, or by his ſheep, for our or anothers debt, or any what ſoever occaſion by our Bailies or Miniſters, or of others, while other beaſts he hath, by which reaſonable diſtreſs upon him may be made, for the levying thoſe debts, except onely thoſe beaſts which in the dammage of any found accord to law and cuſtom of our realm to be impounded ſhall happen, the foreſ. W. the ſheep of the foreſ.* A *at* N, *or the beaſts of him* A. *of his plow at* N *againſt the form of the Stat. foreſ. took, and impounded, and thoſe yet there impounded detaineth, againſt the law and cuſtom, &c. and againſt our peace, &c. and have, &c. and thoſe beaſts to the ſame* A *in the mean time to be delivered cauſe thou. Witneſſe, &c.*

And ſo note, that in this Writ of Treſpaſs the Sheriff ſhall in the deliverance unto the party, as he ſhall do upon a Replevin: And if the party hath the beaſts delivered unto him before the Writ ſued, then this clauſe *averia illa eidem A. deliberari facias*, ſhall not be in the Writ.

C Another Writ, If a man doth take the Oxen, or Carts of another, or other things, as Barges or Ships to carry goods againſt the will of the owner, then he ſhall have ſuch Writ.

The K. &c. If &c. pat. &c. to ſhew why whereas in the Statute lately at Weſtm. ſet forth amongſt other things is contained, that none take horſes, oxen, wains, carts, ſhips & boats for his carriage, againſt the will of him whoſe they are, the foreſ. B. *and* D. *with force and armes a certain cart and four horſes of the foreſ.* A. *at* N. *found, againſt the will of him* A *his carriage to do took, and a great while detained, and other things enormous &c. to the grievous dammage, &c. and againſt the form of the Statute foreſ. and againſt our peace and have, &c.*

D Executors ſhall have ſuch Writ of Treſpaſs for goods and chattels taken in the life of the Teſtator.

And if a man do diſtreyn out of his fee, he who is diſtrain- E
ed ſhall have an action of Treſpaſs againſt them; and in the end of the Writ there ſhall be this clauſe, *And thoſe beaſts to the ſame* A. *to be delivered cauſe*, &c. And by that Writ the Sheriff ſhall deliver the Cattell to the party, as in a Replevin.

If a man caſt any thing upon the feet of another, by which F
he is hurt, he ſhall have an action of Treſpaſs for the ſame.

If a man taketh a Canon or Monk from out the Mo- G
naſtery, the Abbot or Prior ſhall have an action of Treſpaſs thereupon, thus,

To ſhow why a certain houſe within the Priory of B. *which is the Cell of the ſame Abbot, in which Friar* J. *Canon of the ſame Abbot for an offence into which againſt the rule of his Order he fell, was accord. to the rule of the ſame Order to be chaſtiſed. by force and arms hath he broke. and the ſaid* J. *taken and brought away, and other*, &c. Or thus: *Why*, &c *the cloſe of him the Abbot, at* L. *hath he broke, and Friar* W *of* L. *Canon*, &c. *in priſon within the cloſe ſaid accord. to the rule of his Order for chaſtiſement detained, from the ſame cuſtody drawn out, and led away, and other*, &c.

And a man ſhall have an action of Treſpaſs for taking H
his Son and heir, or of his Daughter and heir, and marrying
13 H. 4. 16. her. And the Writ is ſuch:

If A. *ſhall*, &c. *then put*, &c. W. *and* B *that they be*, &c. *why, with force*, &c. John *or* Joane, *as the caſe is, the Son or Daughter and heir of the ſaid* R. *at* I *found have, they raviſhed, married and brought away, and other*, &c.

And the King ſhall have an action of Treſpaſs for ta- I
king of his goods. And the Writ is ſuch:

Whereas with force and arms our goods and chattels, to the value, &c. *and other things enormous there did be, to our contempt, and grievous damage*, &c. *and againſt our peace.*

And for ſuch Treſpaſs done upon the ſale and poſſeſſion of the King, the uſe is for to have an Information of Intruſion for the King in the Exchequer, and the defendant there to anſwer it. And when he appeareth in the Exchequer, the courſe is there to binde him in Recognizance at his peril to leave the poſſeſſion to the King: and yet it ſeemeth the King may have an action of Treſpaſs. *Why his cloſe he broke*, &c. *and herbs ſed up*, &c. *and trees cut down*, &c.

And there are other Writs of Treſpaſs: *Why the ditches* K
and

and hedges of him A. *they broke*, &c.

And another Writ for digging in his Land, and for putting of Lime and Hemp in the ditches, by which the water is corrupted: and the Writ is;

Why, &c. *in the ſeveral ſoil of him* A. *at* N. *he digged, and the earth thence thrown up into the ditches there he caſt. and Lime and hemp in the ſame ditches put, by which the water in the* [91] *ditch being by corruption of the lime and hemp ſo infected became, that the fiſh in the ſame ditch being to the value* &c. *died*, &c.

A And another Writ of Treſpaſs for aſſaulting a man in his houſe, and lying in wait for him, untill he make oath, that he will not bring any action againſt him, &c. and the Writ is ſuch:

Why upon him J, &c. *and him* J *into a certain houſe to which for ſaving his life there he fled, have they purſued, and him therein for no ſmall time beſieged. and him ſo beſieged, untill his corporal oath he took, that any Action againſt the foreſ.* &c. *by occaſion of the treſp. foreſ. or any other occaſion whatſoever he would not move, detained*, &c.

B And if a man have Waife and ſtray within his Mannor by preſcription, and another man taketh the waife or ſtray out of the Mannor, &c. he who hath the Mannor ſhall have an action of Treſpaſs for them, &c. and that without any ſeiſure of them before.

C And if a man take another man and impriſon him, and compell him to make to him a Statute Merchant, or a Releaſe, or an acquittance, he ſhall have an action of Treſpaſs for the ſame, and the Writ ſhall recite the matter, and the deteyning in priſon of him, *quouſque*, &c.

D If a man have wreck by preſcription or by the Kings grant, &c. if goods be wrecked upon his Lands, and another take them away, he who hath the wreck ſhall have an action of Treſpaſs, *Quare vi & armis*, for thus taking, without ſeiſure thereof before: and the Writ is ſuch:

To ſhow, why, whereas the ſame Th. *Lord of the Manner of* Eſton Bavent, *is, and there to have ought, and he and his anceſtors Lords of the Mannor foreſ. from the time beyond memory hitherto to have were accuſtomed, wreck of the ſea within the precinct of the Mannor foreſ the foreſ.* Joice *and* Robert *goods and chattels to the value of one hundred ſhill. at* S. *within the precinct of the ſame Mannor on the land caſt, and which to him* Th. *as wreck to belong ought, with force and arms took and carried away*, &c. Or thus:

Ten

Ten pounds in money, &c. *Or why whereas by Charter*, &c. *to have he ought*, &c.

If a man ſend his ſervant to apprehend his villein, and to E bring him unto him, and the ſervant apprehendeth the villein, and in bringing him unto his maſter, another reſcueth him from the ſervant, and lets him go at large, the maſter ſhall have an action of Treſpaſs for this reſcous, and not the ſervant, for the wrong is done unto the maſter, *&c.*

If an Abbot or other man hath a Hundred, and hath all F Felons goods within the Hundred, if any Felon within the Hundred be attainted, and the Sheriff taketh the goods of the Felon within the Hundred, he who hath the Hundred and ſuch liberty, ſhall have an action of Treſpaſs againſt the Sheriff for the goods with the Sheriff, and the ſame ſhall be, *Quare vi & armis*, &c.

And if an Abbot or other perſon ought to have Toll in any G place, and ſendeth his ſervant to take the Toll, and another doth diſturb his ſervant to take the Toll, the Abbot or he who ought to have the Toll, ſhall have a generall action of Treſpaſs, *Quare vi & armis* they did aſſault his ſervant, and diſturbed him to take the Toll. And the Writ is ſuch;

Why whereas the ſame Abbot by Charter of our Progenitors foref. ſometime Kings of England, *ought to have Toll of things venal to the Town of* S. *coming, the ſame* R. *and* J. *upon* S. *the ſervant of him the Abbot by him ſuch Toll in the Town foref. to collect deputed, with force and arms aſſault made, and him ſo that ſuch toll collect and receive he could not hindered, and cert. chattls by him* S *for ſuch Toll in name of diſtreſſ there taken and attached, from the ſame* S *they took away, by which the ſame Abbot the profit from ſuch Toll coming a great time hath loſt, and other things enormous*, &c.

And ſo if a man ought to have Toll in a Fair, *&c.* and his ſervants are diſturbed to gather the ſame, he ſhall have the like Action for aſſault of his ſervants, and for the loſſe of their ſervice, and for the diſturbance made unto them, and for loſing of the profit of his Toll, and all in one Writ.

vide 1. H. 5. 1. 47. E. 3. 22. And if a man have a Fold in common with two other men, H who diſturb him to ſet up his clayes and pales, and break them, he ſhall have an action of Treſpaſs againſt them in this form. *Quare vi & armis*, thus,

If the Prioreſs of F. *ſhall*, &c. *then put*, &c. E, &c. *to ſhew, why whereas the ſame Prioreſs a certain ſold at* F. *with the foreſ.*

E. *and*

and M *of* B *to have ought, and ſhe the Prioreſs, and her predeceſſ. ſuch fold with the foreſ.* F *and* M *and their anceſt. from the time beyond memory ever hitherto to have were accuſtomed; the foreſ.* E *the claies and pales of her the Prioreſs in the fold of the ſame Prioreſs* E *and* M *at the ſaid Town of* F *lately erected put, with force and arms broke, and her the Prioreſs ſo that the claies and pales foreſ. in the fold foreſ. as to her belongeth to put, or any other commodity from that fold to take be hindered, and other,* &c.

I A man ſhall have an action of Treſpaſs for taking of his Apprentice, or for taking of his ſervant.

K And the Churchwardens ſhall have an action of Treſpaſs for taking the goods of the Church, either in their own time, or in the time of their predeceſſors.

L And a man may have an action of Treſpaſs for breaking of his houſe or cloſe, and alledge a continuance of the Treſpaſs, and of the breaking thereof from ſuch a day unto ſuch a day, as well as he may have for treading of his graſs, or cutting of his Corn, &c.

M The Ordinary ſhall have an action of Treſpaſs for thoſe goods which he hath to adminiſter as Ordinary, where a man dieth Inteſtate, and the goods are taken out of his poſſeſſion, he ſhall have an action of Treſpaſs for the taking thereof. But he ſhall not have an action of Treſpaſs for goods taken out of the poſſeſſion of him that died Inteſtate, but the Adminiſtrators ſhall have ſuch action: for the ordinary ſhall not have an action for goods or debts of him that died Inteſtate, but only an action of Treſpaſs for the goods taken out of his own poſſeſſion. And the proceſs in this Writ of Treſpaſs, is Attachment and Diſtringas, and if the Sheriff do at the Attachment or Diſtringas return *Nihil*, then he ſhall have a *Capias*, and *Alias*, and *Pluries*, and Exigent, and ſo proceſs of utlagary againſt him. [92]

A If the King granteth a Protection unto a man, by which Protection he taketh him, his Lands and goods into his Protection, as the common courſe and form of Protections are; now if another man do afterwards take his goods, or doth enter into any of his Lands or Tenements during the time that the Protection is in force, he ſhall have a ſpeciall action of Treſpaſs againſt him in this form;

To ſhew why, whereas lately we took into our protection and defence, A, *his men, lands, things, rents, and all his poſſeſſion, to all and every one inhibit. that no man to them injury, moleſtation, damage,*

damage, or grievance ſhould do, the ſame B. the goods and chattels of the foreſ. A, while under our protection he was, at N. found, to the value of one hund. pounds, with force and arms took and carried away, and upon his men, &c. by which &c. and other, &c. to the grievous damage of him A. and againſt our peace, and have there the names of the pled. and this Writ. Witneſſe, &c.

And alſo he who hath the Kings Protection, if any men B take his goods, or enter into his Land, *&c.* or beat his ſervants, *&c.* he ſhall have a ſpeciall Writ unto the Sheriff for to enquire of them, and to certifie the ſame before the King, &c. and it ſeemeth the King ſhall make Proceſs againſt them by *venire facias*, as upon an Indictment, and that thereupon they ſhall be fined, and the Writ is ſuch:

The K. to the Sher. of Linc. *greet. We command thee that* C *by the oath of honeſt and legal men of thy County by which, &c. diligently thou enquire, what malefactors, and of our peace perturbers, the goods and chattels of A. to the value of one hund. pounds at N. found, whom we have taken into our defence ſpecially, his men, things, rents, and all his poſſeſſions, to all and every one inhibiting, that no man to them injury, moleſtation, damage or grievance do, with force and arms took and carried away, and upon his men there being aſſault made, and thoſe wounded, &c. and other. &c. to the grievous damage of him A. and againſt our protect. foreſ. and againſt our peace, and inquiſit. thereupon diſtinctly, and openly made, to us under thy Seal, and the Seals of thoſe by whom it ſhall be made, without delay ſend, and this Writ.*

But note, that there is a Statute made *An. 28. E. 3. Cap. 6.* that willeth, That no Commiſſion or Writ ſhall be from thenceforth granted unto the Sheriff, to enquire &c. But if ſuch Writ or Commiſſion be granted, &c. *Quare* if it be good; it ſeemeth not, for this Statute is made only to binde the King that he ſhall not grant, &c.

There is another Writ of Hay in the Meadow cut down D and fed up, and another Writ of a cloſe, doores and windows broken, &c.

Writ de Treſpaſs ſur le Caſe.

THere is another form of Writ of Treſpaſſe upon the E Caſe which is to be ſued in the Common Pleas, or Kings Bench, and in that Writ he ſhall not ſay *Vi & armis, &c.*

&c. but in the end of the Writ he ſhall ſay *contra pacem*, and the form is ſuch:

The K. to the Sher. &c. If Maud *of* D, *&c. put, &c. that he be, &c. to anſwer as well us as* Maud, *why whereas the ſame* Maud *lately a certain our Writ of prohibition againſt the foreſ.* J. *that he ſhould not any plea in Court Chriſtian of chattels, and debts, which are not of Teſtament or Matrimony follow, in our Court had obtained, and the ſaid* Maud *our ſaid Writ to the foreſ.* J. *at* C. *had delivered, the ſame* J. *receiving our ſaid Writ, that there into the dirt caſt, and with his feet kicked, and alſo the plea foreſ. followed in the ſame Court Chriſtian to our contempt, and grievous damage of her* Maud, *and againſt our peace, and have, &c.*

Note well this Writ, that it lieth for caſting a Writ into the dirt. Compare 113 *a.*

F Another Writ, *Why in the water of Plim by which betwixt Humber and Gaunt, for ſhips and boats common paſſage is, overthwart the water ſtakes did he drive in, by which a certain ſhip with* 30 *quarters of malt of his* W. *drowned was, and* 20 *quarters of malt of the price of one hund. ſhill. periſhed, and other things enormous, &c.*

G And if the leſſor do ouſte the Executors of the leſſee of their tearm, they ſhall have a ſpeciall action of the caſe againſt the leſſor, and the Writ ſhall be by ſummons, *&c.* and not by *Pone per vadios & ſalvos pleg.* as the other Writ of Treſpaſs is, and the form is ſuch:

If Joane *Executrix of the Teſtament of* E. *of* C. *ſhall, &c. then ſum. &c.* P *and* M. *to ſhew, &c. why whereas the ſame* P. *and* M. *one mill and ſix acres of land with the appurt. in* N. *to the foreſ* E. *of* C. *for a term which is not yet paſt demiſed, and the ſame* E. *of* C. *in this teſtam. foreſ. the foreſ. mill and lands, unto the end of the term foreſ to the foreſ. Executrix the execution of the teſtament foreſ. therefore to make had deviſed, the foreſ.* P. *and* M. *after the death of him* E. *of* C. *foreſ. the foreſ. mill and lands during the term foreſ. entred, and from the foreſ. Executrix detain leſſ juſtly, and in retardat. of the Execution of the teſtam. foreſ. as is ſaid and have, &c.*

And if the Sheriff doth arreſt a man upon a *Capias* directed unto him, ſued forth upon a Statute Merchant, and afterwards ſet him at liberty, he who ſued the Writ ſhall have a ſpeciall action upon the Caſe againſt the Sheriff, which is ſuch: [93]

A *The K. to the Coroners greet. If* A *ſhall, &c. then put, &c. our Sher. of Suſſ. that he be, &c. to ſhew why* R. *merchant lately by our Writ to the ſame Sher. directed, by preſence of a certain recogniſance*

niſance of one hundred in mark to the ſame A *by the foreſ.* R *according to the form of the Statute at* Acton Burnel *lately ſet forth. made, taken and in the cuſtody of the ſame Sher. at* O *being, the foreſ.* A *of the foreſ. hund. marks not ſatisfied, againſt the will of him* A, *freely to be gone permitted, to the grievous damage of him* A *and in retardat. of the execution of the recogn. foreſ. as is ſaid, and have,* &c.

And if the Sheriff in a Writ of account, or debt, return upon any, *that he is not found, nor hath lands,* &c. *by which diſtrained he may be:* for which a *Capias* is awarded againſt him, and he is arreſted thereupon, where he hath ſufficient lands or goods and chattels. Then he ſhall have an action upon the Caſe againſt the Sheriff, directed unto the Coroners, as before is ſaid, *&c.* B

14 *H.* 7. 10. 22 *E.* 4. 1. & 2 34 *H.* 6. 6. 21 *H.* 7. 30. 36 *H.* 6. 3.

And ſo another Writ, If the Sheriff hath a priſoner committed unto him for debt, *&c.* and afterwards he ſuffer him to go at liberty before the debt be ſatisfied, *&c.* he ſhall have an action upon the Caſe againſt the Sheriff, and yet it ſeemeth he may have an action of debt againſt the Sheriff. C

If a man be endicted of felony before any Juſtice, and one *T.* as one of the four men of the Town and Reeve give the Evidence as indictors, *&c.* and afterwards he who is endicted is acquitted, *&c.* and afterwards the Bayly of the Hundred or other Officer ſheweth unto *T*, that he who is acquitted, hath a Writ of Conſpiracy againſt him, and that he hath a *Capias* to arreſt him, by which he is arreſted and impriſoned untill he pay ſix marks for a fine for his deliverance, *&c.* he ſhall have an action of Treſpas upon his Caſe; But it ſeemeth he may have a generall action of Treſpaſs in that Caſe upon falſe impriſonment, if he have not any Writ directed unto him. D

If a Replevin be removed out of the liberty by *Pone* into the Common pleas, and afterwads pendant the plea there, the Bayly of the liberty doth award a return in the liberty to the defend. for which he taketh the Cattell and impoundeth them, by means whereof ſome of them dy for want of food, the party grieved ſhall have an action upon the Caſe againſt the Bayly of the liberty, who awarded that return to hold plea after the matter removed in the Common pleas. E

If a man doth attach another or his goods for debt, *&c.* in a liberty, and after the Bayly by covin betwixt him and the defendant, to diſcontinue the plant, deliver the goods attached F

tached to the defen. the plaint ſhall have an action upon the Caſe againſt the Baily, and the Writ is ſuch:

If A. ſhall &c. then ſum. 1. Baily of the great Court or market of N. *that he be, &c. to ſhew, why whereas the ſame Baily at the complaint of the foreſ.* A. B. *by certain his chattels to anſw. the foreſ.* A. *in the Court foreſ. accord. to law merchant as the manner is in our realm of* Engl. *of a debt of ten pounds which the ſame* A. *of the foreſ.* B. *axacteth, had attached, and in the plea foreſ. in the ſame Court betwixt the parties foreſ. becauſe themſelves upon the inqueſt thereupon they had put, ſo far it was proceeded, the foreſ. Baily, hanging before him the inqueſt foreſ. by colluſ. betwixt him and the foreſ* B *had in the Court foreſ. malicioufly receded, and the inqueſt foreſ. to take refuſed, by which the plea foreſ. became diſcontin. and the ſame Baily the Chattels foreſ. to the ſame* B. *the ſoreſ.* A. *of the debt foreſ. not ſatisfied, after delivered, to the damage of him* A *twenty pounds, as is ſaid, &c.*

G And a man ſhall have an action of Treſpaſs upon the caſe againſt his neighbour who hath lands betwixt him and the ſea, and ought to make banks, and cleanſe certain ditches and ſewers betwixt him and the ſea, and he doth not cleanſe them as he ought to do, by reaſon whereof his land is ſurrounded, *&c.* he ſhall have his action of the Caſe againſt him for not mending the banks, and cleanſing the ditches and ſewers, *&c.*

H If a man be committed unto the Goal for debt or arrearages of account, and the Goaler of malice lay ſo many irons upon him, or ſet him in the ſtocks, or keepeth his victuals from him, by reaſon whereof he is ſo ſpent that he becomes lame, or hath other infirmity, he ſhall have an action upon the Caſe againſt the Goaler.

If a man doth diſtrain any Priors, or other Prelates horſe, whereupon he is riding is his journey, for or upon any contract, debt or treſpaſſe done by him or his predeceſſor, when he might have diſtrained or attached him by other goods or chattels of the ſaid Prior or Prelate, Then he ſhall have an action upon the Caſe, which is ſuch: *vide Br.* attachment. 23 but if he hth not other goods, then he may attach theſe goods.

J *If A Prior, &c. put* B, &c. *to ſhow why, whereas no man may a Prelate, great man, or any perſon Eccleſiaſtic. of our Realm, by the ſame Realm any way paſſing, by occaſion of any contract or debt, by his horſe proper diſtrein, when other beaſts or chattels there he hath, by which reaſonable diſtreſs upon him may be made, the foreſ.* B. *the foreſ. Prior by the Town of* C. *paſſing, by occaſion*

occaſion of a certain contract betwixt S. ſometime Prior of, &c. predeceſſor of the foreſ. Prior and the foreſ. B. of late as is ſaid by a certain horſe his palfric, although by other beaſts and chattels then there reaſonable diſtreſs upon him have made he might,
[94] *diſtrained; and that palfry long maliciouſly detained, by which his weighty buſineſſes, for which his paſſage foreſ. he made, periſhed, and other,* &c.

And if a man promiſe and take upon him to make for another man certain carts for carriages, or other thing, and taketh money before hand for to do the ſame, and afterwards he doth not make them according to the promiſe and undertaking, the other may have an action upon the Caſe againſt him, and the Writ ſhall be ſuch: A

If W, &c. *then put* I, &c. *to ſhew why whereas the ſame* I *three wains for the victuals and harneſſe of him* W, *to the parts over ſea to carry for a certain ſumme of mony, one part in hand received, within a certain term betwixt them agreed, to make at* S *aſſumed, the ſame* I *the wains foreſ. within the term foreſ. to make cared not, by which the ſame* W *divers goods and chattels to the value of one hund. mark which in the waines foreſ. carried ought to have been, for defect of the wains foreſ. totally hath loſt, to the grievous dammage of him* W *as is ſaid, and have,* &c.

And if a man be lodged in any Inne, and any of his goods be taken or ſtolen from thence by a ſtranger, he ſhall have an action upon the Caſe againſt the Inne-keeper, and the Writ ſhall be ſuch: B

The K. to the Sher. &c. *If* A *ſhall,* &c. *then put,* &c. B *that he be,* &c *to ſhew,* &c. *why whereas accord. to law and cuſtom of our Realm of Engl. Hoſtlers who common Innes keep, to receive men by the parts where ſuch Innes are paſſing, and in them the gueſts, and their goods, within thoſe Innes being without ſubſtraction to keep, night and day they are bound, ſo that for defect of them the Hoſtlers or their ſervants, to the gueſts no ſuch damage befall in any manner, ſome malefactors a certain horſe of him* A *of the price of* XL. *ſhill. within the Inne of the ſame* B *at* S *received found, for defect of him* B *took, and led away, and other things enormous, to the grievous damage,* &c. *and have,* &c.

9 H. 6. Action ſur le Caſe 15. If a man do ſell unto another man a horſe, and warrant him to be ſound and good, &c. If the horſe be lame, or diſeaſed that he cannot work, he ſhall have an action upon the Caſe againſt him. C

And

And ſo a if man bargain and ſell unto another certain pipes of wine, and warrants them to be good, &c. and they are corrupted, he ſhall have an action upon the Caſe againſt him.

But note, it behoveth that he warrant it to be good, and the horſe to be ſound, otherwiſe the action will not lye. For if he ſell the wine, or horſe without ſuch warranty, it is at the others perill, and his eies, and his taſte ought to be his judges in that Caſe.

D But if a ſmith prick my horſe with a nail, &c. I ſhall have my action of the Caſe againſt him, without any warranty by the ſmith to do it well. And the Writ ſhall be, *Why a certain nail into one of the feet of a certain horſe of J at* N *did he fix, by which putrid it became, ſo that the ſame horſe a great time labour could not, and the ſame J the profit of his horſe foreſ. for the ſame time loſt, to the damage*, &c. For it is the duty of every artificer to exerciſe his art right, &c. truly as he ought.

E And if any Sheriff or under Sheriff do diſtreyn any Parſons or Vicars or other ſpirituall perſons, in any Lands whereof they are poſſeſſed in the right of their Churches, they ſhall have actions upon the Caſe againſt the Sheriff in this form:

The K. &c. If A *Parſon of the Church of* C *ſhall*, &c. *then put*, &c. B *our Sher. of Somerſ. and* C *our under Sher. of the ſame Coun. that they be, &c. to ſhow, why whereas in the Articles of the Clergy of our Realm by the Lord* E *lately King of* Engl. *our progenit. granted, amongſt other things is contained, That our Miniſters, as the Sher. or others, take not the beaſts of Rect. of Churches for any diſtreſſe in the way Royall, nor in the fees in which thoſe Churches heretofore were indowed, the foreſ. Sher. and under Sher. the beaſts of the foreſ. at* L *in the fee of him* A *of his Church foreſ. of which the ſame Church heretofore indowed was, took, and thoſe thence to* S *led, and impounded, and thoſe impounded there long time detained, againſt the law and cuſtom of our Realm, and againſt the form of the Articles foreſ. and againſt our peace, &c. and have, &c.*

F If a man ought to be quit of Toll for himſelf and his Tenants and men, in every Market or Fair, &c. Now if any Officer or Baily take Toll of him his Tenants or men, he of whom the Toll is taken ſhall have an action of Treſpaſſe upon the Caſe againſt him who took the Toll, or diſtreyned

his goods for the Toll. And alſo he may have a writ out of the Chancery directed unto the Bailies or ſuch Officers, that they ſuffer them to be quit of Toll, *&c.* and he may have an *Alias*, and a *Pluries*, and Attachment thereupon againſt the Bailies or Officers, if they do not obey ſuch Writs, and the *Pluries* ſhall be returned into the Common pleas or Kings Bench.

If a man hath a Mannor within any Honor, and by preſumption hath had view of frankpledge of his Tenants within his Mannor, *&c.* Now if he or his Tenants be diſtreyned by the Lord of the Honour, to come unto the Leet of the Honour, and to preſent there thoſe things which ought to be preſented within the view of Frankpledge within the Mannor. He who is ſo diſtreyned may have a general action of Treſpaſs for this diſtreſs, or he may have a ſpecial writ directed unto the Baylies or Officers of the Honor reciting the whole matter; commanding them, that they ſuffer the Lord of the Mannor to have and hold his Leet of
[95] his demaines *&c.* as he hath uſed to do; and that they do not diſtrain him or his Tenants in any wiſe to come unto the Leet of the Honour, to preſent any thing which ought for to be preſented in the Leet of the Mannor; and alſo comprehending in the ſame writ, that if they have taken any diſtreſs for that Cauſe, that he then re-deliver them, *&c.* And upon that he may have an *Alias* and *Pluries*, and Attachment againſt them if they do not obey the aforeſaid Writs.

And alſo if a man hath uſed to have a gulf of water in any A
water, and it hath been uſed, that no other ſhould make a gulf in the ſame water between his gulf and the gulf of *B*; now if another doth make another gulf betwixt them, he ſhall have his action upon the Caſe in this manner. *If* A *Parſon of the Church of* C *ſhall*, &c. *then put*, &c. R *of* T, &c. *Why whereas the ſame* A *to have ought, and he and his Predeceſſors Parſons of the Church foreſ. from time beyond memory ever yet to have were accuſt. a certain gorſe in the water of* W *in* B, *ſo that in the ſame water betwixt the gorſe of him* A, *and the gorſe of him* S, *of* E *Lord of the Mannor of* H, *no man any gorſe levy, pales or claies fix. or any nets fiſh there to take, to put ought, or accuſtomed, any times by-paſt, the ſame* B *claies and pales betwixt the gorſe of the foreſ.* A *and* S *in the ſame water hath fixed, and nets there to take put, and there fiſhed,*

and

and fiſh thence taken, and carried away, by which the ſame A, *the profit of the gorſe foreſ. to the value of one hundred ſhill. hath loſt, and have,* &c.

B And if a man hath a Liberty to return Writs, and to execute them, if the Sheriff *ex officio* enter into the Liberty, and execute any Proceſs there; the Lord of the Liberty ſhall have an action upon the Caſe againſt him; and theſe Writs do appear in the Regiſter. 20 H. 7. 7. 11 H. 4. 9.

C If a man be found in arrerages before Auditors, for which the Auditors do commit him to the Goal, and afterwards he eſcape from thence, now the Goaler ought to pay the money which was arrear upon the accompt. And the Goaler ſhall have his action upon the Caſe againſt him who eſcaped to anſwer unto the King for the Eſcape, and to the Goaler for the damages which he hath ſuſteyned; The form of the Writ is ſuch:

The K. to the Sher. &c. *of the grievous plaint of* A *we have received, that whereas* B *his account from the time which he was Baily of* C. *in* N. *to the ſame* C. *within the Liberty of K. Lately gave and the ſame* B *for arrerages of that account after arreſted, and to the foreſ.* A *Keeper of our Goal of the Liberty foreſ. delivered was, in the ſame Goal to be kept till the foreſ.* C *of the arrerages foreſ. accord. the form of the Statute, concerning ſuch receivors and Bailies provided, fully he ſhould ſatisfie, the foreſ.* B *from the cuſtody of the foreſ.* A *the foreſ.* C. *of the arrerages foreſ. not ſatisfied, againſt our peace eſcaped, by occaſion of which eſcape the ſame* A, *the foreſ.* C *of thoſe arrerages accord. to form of the Statute foreſ. fully hath ſatisfied, to the no ſmall damage and grievance of him* A. *And becauſe that treſp if ſo it were done we will not leave unpuniſhed, we command thee, that if the foreſ.* A *ſhall ſecure thee, then the foreſ* B *by his body attach thou, ſo that him thou may have before us,* &c. *to anſwer us of the eſcape foreſ. and the foreſ.* A *of the damages which he ſuſtained by occaſion of that eſcape, and have there this Writ,* &c.

D And if a man play with another at Dice, and he hath falſe Dice with which he playeth, and gets the othes money with theſe falſe Dice, he who loſeth his money may have his action upon the Caſe for this deceit, and the form of the Writ is ſuch:

The King to the Sher. &c. *If* A *ſhall,* &c. *then put,* &c. T *of* D, &c *that he be,* &c. *to ſhow why, Whereas the ſame* T *of* D *machinating him craftily to defraud, and divers ſummes of moneys*

from the ſame A *to extort, the ſame* A *to play at Dice with him* T *at a certain play called the dozen for divers ſums of money at* Burton *upon* Trent *had excited and procured, and the ſame* A *with him* T *at Dice at the ſport foreſ. there played, the foreſ.* T *certain Dice truly tited to the ſame delivered to caſt, and when the Dice foreſ. to the hands of him* T *to come happened, the ſame* T *certain other Dice falſe and deceitfully tited, which the number of twelve, and no other every caſt to come to be knew, falſly and fraudulently he threw, by which the ſame* A *great ſummes of money to the ſame* T *at that ſport loſt, and the ſame* T *thoſe ſummes under colour of winning, falſly and deceitfully took, and carried away, to the damage of him* A *one hund. ſhill. as is ſaid, and have there the name of the pledge, and this Writ. Witneſſe, &c.* and this Writ was ſued *Anno* 5.E.4. which ſee in the Regiſter, 240.

And although that the Defendant doth not entice the Plaintiff for to play, yet if the Defendant play with falſe Dice, *&c.* by which he gets the Plaintiffs money; it ſeemeth the Plaintiff may maintain this action well enough, becauſe the enticement is not the cauſe of the action, but the caſting of the falſe Dice, by which he gaineth the money, *&c.*

Writ de Diſceit.

vid. Long. 5 E. 2. 40. 18 E. 2. Diſceit 41. The *Writ* cannot be ſued by Attorney. 19 H. 6. 50. it ſhall not abate for form, if it hath matter of ſubſtance.

THis Writ lieth properly where one man doth any thing in the name of another, by which the other perſon is damnified and deceived; Then he who is ſo damnified ſhall have this Writ, and the Writ is without the words *vi & armis*, and the Writ is ſuch:

[96] 26 E. 3. 65. Diſceit 58. The King ſhall have this Writ, if it touch him not, becauſe it is penal.

The K. to the Sher. of Linc. *greet. If* A *ſhall*, &c. *then put*, &c. B. &c. *to anſwer as well us as the foreſ.* A, *why a certain our Writ by a fine of* xx. s. *to our uſe by the Writ foreſ to take in the name of the foreſ.* A *altogether ignorant, fraudulently and maliciouſly in our Chanc. he obtained, in deceit of our Court to the grievous damage of him* A, *and have there the name of the pledge, and this Writ*, &c.

By which it appeareth, That if a man do purchaſe a Writ 19 H. 6. 44. if a man levy a fine, confeſs an Action or a Recog. or Statut, or ap, ear as vouchee in my name.

In

in my name, for which Writ I ought to pay a fine in the Chancery, as the courſe there is for every Writ of Debt of the ſumme of 40^{lb} or more, to pay for every Writ of 40^{lb} vi. s. and viii^{d}: and if it be of 100 marks vi. ſh. viii^{l}. And ſo for every 100 marks vi. ſh. viii^{l}: and ſo for every Writ of Plea of Land, which is *Præcipe quod reddat*, if it be not a Writ of Right Patent, for every Writ which is of the yearly value of 5 marks vi. ſh. 8^{d}, *&c.* and ſo according to that rate. And then if a man purchaſe ſuch Writ in my name, and I know not thereof, I ſhall have this Writ of Diſceit. 19 H. 6. 44. 7 H. 6. 44.

A And if I do preſent one unto a Church whereof I am the Patron, unto the Ordinary, and one *T* doth diſturb me, for which diſturbance another doth purchaſe a *Quare impedit* in my name returnable in the Common pleas againſt the ſaid *T*, I not knowing thereof, and afterwards cauſeth the Writ to abate, or me to be Nonſuit in that Writ, I ſhall have this Writ of Diſceit againſt him who purchaſed that Writ, *&c.*

B If one forge a Statute Merchant in my name, and ſueth a *Capias* thereupon, for which I am arreſted, I ſhall have this Writ of Diſceit againſt him that forged it, and againſt him who ſued forth the Writ of *Capias*, &c. 19 H. 6. 44. If a man make an obligation in my name, I ſhall not have Diſceit, becauſe I may plead *Non eſt factum.*

C If a Prior or Abbot have Title to preſent unto a Vicarage whereof they are Parſons impariſonee and Clark ſecular or Regular at their wils: and afterwards another doth forge a grant in the name of the Abbot or Prior under their Covent Seale, that they do grant to one of the Pariſhioners, *&c.* that they ſhall preſent a ſecular Perſon, and not a Regular, as a Canon or ſuch like, *&c.* The Prior or Abbot may have a Writ of Diſceit, and the form ſhall be ſuch:

If the Frior of Bartholomew *of the Suburb. of* Lond. *&c. put* VV *and* B *that they be before us*, &c. *in the octav. of S^{t}.* Martin *wherſoever*, &c. *to ſhew why, whereas the ſame Prior or Perſon ſecular, or Regular, fit to the Vicarage of S^{t}.* Sepulcher *without the wals of* Lond. *which Church the ſame Prior holdeth to his proper uſes at his will to preſent ought, and hitherto hath accuſtomed, the ſame* VV *and* B *by colluſion betwixt them foreſpoken, the foreſ. Prior maliciouſly to grieve machinating, the Com. Seal of the Priory foreſ. counterfeited. and certain Letters Patents, by which the Predeceſſ. of the foreſ. Prior to have granted ought, that the ſame Prior and covent of the place foreſ. a Perſon ſecular, and no other to that Vicarage ought to*

present with the same Seal counterfeit to be signed they caused, and those Letters with the Seal foresaid signed in a certain cause at the instance of him W, and the foresaid Prior before the Official of the Court of Canterb. of Christian upon the motion of Friar R of F Canon of the foresaid Prior at his presentation to the Vicarage foresaid by the Bishop of Lond. admitted, moved, exhibited, and him the Prior with labour and expences by vertue of the Letters foresaid diversly in this part to be tired out have procured, to the no small loss and grievance of him the Prior, and have there the name of the pledge, and this Writ.

And if a man be Atturney for another in a plea real against D the Demandant, and afterwards by Covin between the Atturney and the Demandant, the Atturney makes default for which the Land is lost, the Tenant who lost the Land shall have a Writ of Disceit against the Atturney, and the Writ shall be such:

To shew why, Whereas the same A the foresaid R in the plea which was before the same our Justic. by our Writ betwixt K demand. and the foresaid tenant of 20 acres of Land with the apurten. in C. his Atturney had made to gain or lose in the plea foresaid the foresaid R by collusion betwixt him, and the foresaid K had, himself at a certain day by our foresaid justic. in the same plea in our Bench foresaid prefixed, freely absented, by which the same A for default of him R the Land foresaid by consideration of our Court lost, in deceit of our same Court, and to the grievous damage, and of disherison peril manifest of him A, and have, &c.

And if an action of Trespass be brought against many, E and the Plaintiff and one *I*, by covin between them cause certain persons to come into Court, and say that they are the same Defendants, and that they make the said *I* their Atturney, and afterwards the said *I* as Atturney for the Defendants pleadeth unto issue, and afterwards suffer the enquest to passe by default, by which the Plaintiff doth recover against the Defendants: Now those who are the true Defendants shall have a Writ of Disceit against *I*, who appeared as Atturney for them, *&c.* and the Writ appeareth in the Register.

And so if *R* doth recover in an assize against *W*, certain Tenements and Damages, and because *W* hath nothing in the same County to keep the Damages, *R* removeth the Record of assize into the Kings Bench or Common pleas, to sue forth Process thereupon, and to have Execution of the said

said Damages recovered, for which the said *W* to defraud the said *R* of his Execution, sueth forth a writ to remove the Record in Chancery, surmising that he will have an attaint thereupon before the Justices of assize, *&c.* by which the Record is removed into the Chancery, and delivered to the said *W* to carry to the said Justices of assize, whereupon he may sue his Attaint. Now if the said *W* will not sue forth the Attaint, but delay him, to ouste him of his Execution, *R.* who recovered shall have a Writ of Disceit against him upon the matter, which appeareth in the Register. [97]

A One *I de A* sueth a *Præcipe quod reddat*, against *C.* and *T.* his wife, who plead a fine levied to the said *T.* by one *F.* and *Margaret* his wife, mother of the Demandant, *&c.* and the Defendant saith, That his mothers name is *Margery*, and not *Margaret*, and after day is given by the Court, at which day *C.* and his wife procure and cause a stranger to come into Court and confess the fine as the Tenant hath pleaded, by which the Demandant is barred, the Demandant shall have a Writ of Disceit against the said *C.* and *T* his wife, as appeareth by the Register. But it seemeth, that if *Margery* do levy a fine of her Land by the name of *Margaret*, that she and her heirs shall be concluded to say, that she hath another name. But the Tenant may plead, That she by the name of *Margaret* did levy a fine of her Land, *&c.* and that hath been done where a woman had to her name *Agnes*, and she levieth a fine by the name of *Anne*, it hath been awarded good, and shall binde her and her heirs, and shall be pleaded, That she by the name of *Anne* levied the fine, the same; for I shall not have Disceit by *Littleton* and *Dandy*. 5 E. 4. 1. 40. B. confess & avoid. 40. where a man levieth a fine of my Land in my name, I may confess and avoid the same, as to say that another of the same name levied the same, without that that I levied

B If a man sue a *Præcipe quod reddat* against divers Tenants, and they purchase a Protection for one of them surmising that he is beyond the Seas upon the Kings service, whereas he is and alwayes hath been remaining in *England*, by which the Demandant is delayed, The Demandant shall have a Writ of Disceit against the Tenants for that delay, and the Writ shall be such. 20 H. 6. 10. and the Writ was brought where he was at the time of the protection, 44 E. 3. 4. If a man sueth a protection and doth not go, this Writ lieth, cont. if he go, though he pre ently return,

If A *shall* &c. *then put* B *and* C *&c. that they be before*, &c.

to answer as well as A, why, whereas the same A in our Court before our Justices of the Bench had impleaded by our Writ the forest. B and C of three parts of the Manor of S with the appurt. the same B and C our Court and the Law and Custom of our Realm of England manifestly deluding, and the prosecution of the forest. A in this part to prorogue machinating, at a certain day to the parties forest. in the same plea before the forest Justices prefixed, certain our Letters of protection containing that he C to the parts beyond Sea in our service then was to passe over, and him so quit to be of all pleas and plaints, except pleas of Dower, whereof nothing he hath, and Quare impedit and Ass. of new l disseisin and of the last presentation and attaint, and except pleas which before our Justic. errant in their eyres to be summoned shall happen, before our forest. Justi.. to be offered, they caused him C then, after and before in Engl. continually abiding, by which that plea before the forest Justic. remained without day, to the manifest contempt of us and deceit of our Court forest and of our laws and custs. forest delus manifest as also to the no small lost of him A. and of disherison peril manifest. and have there &c.

In a *Præcipe quod reddat*, if the Sheriff return the Tenant summoned where he was not summoned, by which the Defendant loseth his Land by default at the Grand Cape, returned, The Tenant shall have a Writ of Disceit against him who recovered, and against the Sheriff for his false return, and by that Writ the Tenant shall be restored unto his Land again. And it seemeth the Tenant shall have this Writ after Judgement given for the Demandant against him that recovered, before any entry or possession: For if the Tenant shall not have a Writ of Disceit before the Demandant doth enter, then perhaps the Demandant will not enter, untill the Summoners in the *Præcipe quod reddat*, and the Summoners, Viewers and Pervors in the Grand Cape are dead, and then he shall not have a Writ of Disceit after their deaths; For whether he were summoned or not, shall be tried by the Summoners, and Viewers, and Pervors by examining of them.

3 E. 3. Disceit 47. 18 E. 2. Disceit 54. But see 3. E. 3. That the Tenant shall not have a Writ of Disceit before the Demandant hath entred, *Tamen quære.* And in a Writ of Disceit the Process shall be made against the Summoners, Viewers and Pervors to be examined thereupon, *&c.* And if the Demandant who recovered by false return of the Sheriff make a Feoffment of the Land, then the Writ of Disceit lieth against the Demandant who recovered,

vered, and against his feoffee, and the Sheriff: And if the demandant who recovered be dead, and the Sheriff also, yet the Writ of Disceit lieth against the demandants heir, and against him who is Tenant of the land, if the Summoners viewors and pervors be living: But if the Summoners viewors or pervors be dead, then the Writ of Disceit is lost. But a Writ of Disceit lieth if any of the Summoners viewors or pervors be alive, for if they say that they did not summon him, then the plaintiff in the Writ of Disceit shall recover his land and shall be restored, *&c.* for it ought to be done by two Summoners at the least, and two viewors, *&c.* And if any of them do not that which is returned they ought to do, then the Writ is not executed as it ought to be, by which the plaintiff in the Writ of Disceit ought then to be restored, *&c.* 38 E. 3. 16. 8 H. 6. 2. 50 E. 3. 16. 35 H. 6. 46.

D And in a *Scire facias* to execute a fine, if the Sheriff return the Tenant summond by two Summoners, if it be not true, yet the Tenant by the return shall lose the land, for execution shall be awarded upon the return, if the Tenant do not appear, and then the Tenant shall have a Writ of Disceit against the Sheriff, and him who had execution, and him who is Tenant, and shall be restored to the land.

And so if a man sue a *Scire facias* upon a recognisance of debt, and the Sheriff return the defendant summoned where he is not summoned, for which the plaint. hath Execution awarded, the defendant shall have a Writ of Disceit against him who had execution and the Sheriff, and the Sheriff shall be punished by this Writ for his falsity, and the party who recovered shall make restitution of that he recovered, *&c.* [98]

A And if a man levy a fine at the common Law unto another of land which is in ancient demesne, the Lord of ancient demesne shall have a Writ of Disceit against him who levied the fine, and he who is Tenant shall avoid the fine, and there he who ought to give the land shall be restored unto his possession, and title which he hath given by the fine, because the fine and gift thereby is avoided. But if he who levieth the fine have after by his deed released unto him who hath the possession by the fine or by deed confirm his estate in the land, then he unto whom the release or confirmation is made, shall have and keep the land notwithstanding that the fine be avoided, because that release or confirmation made unto him being in possession hath made his estate firm and rightfull, against him and his heirs who released or confirmed the same. If 8 E. 4. 6. *acc.* where a man loseth by *Precipe in capite*, where he ought to have sued in the Lords Court, and the Lord brought Disceit for the profits of the court. 48 E. 3. 20. 17 E. 3. 18. 20 E. 3. Disc. 5. *acc.* 19 H. 2. Disc. 3. 19 E. 2. 1. Disc. 56.

If a man do recover in a Writ of Waſt where the Tenant was not ſummoned, &c. the def. ſhall have a Writ of Diſceit, and ſhall be reſtored, *T. 9. E. 3.* B

If husband and wife loſe the land of the wife by default, they may ſue a Writ of Diſceit, and if the husband dieth it ſeemeth the wife may ſue a Writ of Diſceit to be reſtored to her land, &c. or have a *Cui in vita* upon the Statute, at her election; and the Writ of Diſceit ſhall be directed unto the ſame Sheriff who did the Diſceit and falſe return, and not unto the Coroners as appeareth, *Trin. 20. E. 3.* Yet it ſeemeth it is not Error, if it be directed unto the Coroners, &c. C

20 E. 3. Diſc. 4. he ſhall not have Diſceit by Writby: but cont.

And in a Writ of Diſceit, if the Sheriff return one Summoner dead, yet the other Summoner ſhall be examined, &c. And if it be found that he did not ſummon, &c. the party ſhall be reſtored unto the land: and ſo if one veiour or pervor did not do that, which he ought to do, thy party ſhall be reſtored becauſe it ought to be done by both, &c. But if Summons be by four men, as long as two of them be alive, the tenant who loſt, may have a Writ of Diſceit. D

20 E. 2. Diſc. 5. 8 H. 6. 1

18 E. 4. 1.

And a Writ of Diſceit lieth againſt him who embeſſelleth a Writ, and alſo againſt him who procureth another to embeſſell a Writ, if it be embeſſelled, &c. E

19 H. 6. 29. 5. 71.

And if a man doth bargain with another to enfeoff him of certain lands, and afterwards he enfeoffeth another man, he with whom he made the bargain ſhall have a Writ of diſceit. F

20 H. 6. 34. 16 E. 4. 9.

And if a man do recover in a *Quare impedit* by default, &c. if the defendant be not ſummoned, he ſhall have this Writ, and the ſummoners and pledges upon attachment ſhall be examined thereupon. And if the Diſceit be found, he ſhall have a Writ to the Biſhop, &c. for him. G

26 H. 6. Diſceit. 15. 27 H. 6. 5. and. 34. E. 3. Diſceit. 57. Neither the Clerk nor the defend. ouſted.

If an Action of debt be brought againſt two as Executors where one of them is not Executor, if he who is not executor confeſſe the Action; he who is Executer ſhall have a Diſceit againſt him and recover as much in damages. H

9 h. 4. 33. *Lit. ac.*

10 E. 4. 9.

If an Attorney be not enformed by his Client to plead in any Action, and he plead, That he is not truly informed, and therefore no anſwer, the ſame ſhall be entred to ſave him of damages in a Writ of Diſceit brought againſt him by his Client. I

If a man ſell cloaths, and warrant them to be of a certain length, if they be not of ſuch length, he who brought them K

ſhall

ſhall have a Writ of Diſceit againſt him upon this warranty, although the warranty be only by word: but if the warranty be made at another time after the bargain made, then it ought to be in writting, otherwiſe he ſhall not have an action upon that warranty: for he ſhall not have action of Diſceit therefore, if the warranty be not made upon the Bargain and at the time of the bargain. 5. H. 7. 41.

L The Writ of Diſceit ought to be brought in the County where the Diſceit is ſuppoſed to be done. 9. H. 5. 6.

M If a man recover in a *Pracipe in Capite* by default, where the lands are not holden of the King, nor he hath not the Lords licence to ſue in the Common Pleas, the Lord ſhall have a Writ of Diſceit and recover damages: but the recovery ſhall ſtand in force, and the Lord ſhall have his ſeignory, and he who recovered ſhall alſo hold over of the King by way of Eſtoppell. 8. E. 4. 6.

N If a man procure another to ſue an action againſt me to trouble me, I ſhall have a Writ of Diſceit.

O A Writ of Diſceit ſhall be maintainable againſt the Attorney and the Sheriff, becauſe they put a Writ of *habere facias ſeiſinam* upon the file of the Sheriffs Writs, where they have not any Record to warrant it.

P If a man levy a fine of land in ancient demeſne, and alſo of land of the common law, the party ſhall have a Writ of diſceit for the ancient demeſne land, and ſhall avoid the fine for that land, and the fine ſhall ſtand good for the land at the common law. 21 E. 3. 20. 6 E. 4. 6. 17 E. 2. 31. Diſceit 37.

Q If a man loſe lands by default in a *Pracipe quod reddat*, and dieth, his heir ſhall have a Writ of Diſceit as well as the father, and ſhall have reſtitution. 15 E. 3. Diſceit 43. 18 H. 2. 16. 30.

R If a man have execution by default upon a recogniſance in a *Scire facias* ſued againſt another, and the defendant dieth, his Executors ſhall have the Writ of Diſceit, and ſhall be reſtored, *&c.* If the Diſceit be found that their teſtator was not warned, there the Garniſhors ſhall be examined, *&c.*

S And if a man recover in annuity, and afterward ſueth a *Scire facias*, and recovereth by default, the def. ſhall have a Writ of Diſceit, if he were not warned. 12 E. 3. Diſceit 42.

A And the vouchee ſhall have a Writ of Diſceit where he loſeth by default, if he were not ſummoned, *&c.* [99] 3 & 4 E. 3. Diſceit. 45.

B In a *Pracipe quod reddat* againſt the husband and wife at the grand Cape, the husband appeareth in perſon, and the wife

wife appeareth by Atturny, who hath a warrant which is in-
18 E. 2. Diſceit 54, 55. ſufficient, by which judgement is given upon the default of the wife againſt the husband and wife *&c.* yet they ſhall have a Writ of Diſceit if they were not ſummoned, *&c.*

19 E. 2. Diſceit 56. And where a man loſeth by default in a *Quare impedit*, or C waſte, it behoveth that the ſummoners and the pledges upon the attachment, and the manucaptors upon the diſtreſs ſhall be examined, when the Writ of Diſceit is brought therefore. See in the title of Diſceit in the abridgments for that matter.

If a man ſue a Writ of Monſtravit againſt another to ac- D count, *&c.* where he hath ſufficient lands in another County by which he may be brought to anſwer by Writ of account, the defend. ſhall have a Writ of Diſceit againſt the Plaintif who hath the *Monſtravit quod vid. Mich. 9 E. 2 fitz diſceit. 52.*

If Tenant for life loſeth by default where he was not ſummoned, and dieth; he in the reverſion ſhall not have a Writ of Diſceit, becauſe he ſhall not have a Writ of Error, if not by the Statute *&c.*

1 E. 3. 5. So of leſſee for years. If a man be Tenant for life of a Mannor in ancient de- E meſne, and a Tenant of that Mannor doth levy a fine of his land at the Common Law, the Lord of the Mannor who is Tenant for term of life ſhall have a Writ of Diſceit, and after his deceaſe, he in the reverſion ſhall have a Writ of Diſceit, and reverſe that fine.

If the King doth recover in a *Pracipe quod reddat* or in a F Formedon againſt another man by default, the tenant ſhall have a Writ of Diſceit as well as he ſhall have a Writ of Error where the King recovereth by erroneous proceſs, *&c.* or erroneous judgement. See for this matter, *M.* 10 *H.* 4 in title Traverſe in the Abridgments.

32 E. 3. Diſceit 6. And this Writ of Diſceit ſhall ſometimes iſſue out of the G Common Pleas, or he may ſue it out of the Chancery if he will, as if a man loſe lands by default in a *Pracipe quod reddat* in the Common Pleas, the Tenant if he were not ſummoned ſhall have a Writ of Diſceit out of the Common Pleas, if he will, or out of the Chancery.

17 E. 3. 12. Diſceit 36. And ſo if a man have Execution upon a recogniſance in H the Common Pleas, or Kings Bench by default, &c. the defendant ſhall have a Writ of Diſceit, if he were not ſummoned out of that Court where the execution was ſued, &c. or out of the Chancery at his election.

And there are divers other Writs of Diſceit, in the form I of a

of a Writ of *Audita querela*, as if one ſue a *Præcipe quod reddat* againſt another, and the tenant is eſſoyned at *Quind. Paſc.* which eſſoyn is adjourned untill 15 Trin. the Term following, and the demandant and his Atturney by Covin betwixt them Recovered a Writ in the file of Writs, that the Tenant hath made *N* & *M* his Atturnies joyntly and ſeverally at the ſaid *Quind. Paſc.* by which the demandant challengeth that eſſoyne, becauſe he had Atturny in the Writ not eſſoyned, by which at the day of adjournment the eſſoyn is quaſhed and the demandant recovereth the land by this default at *Quind. Paſc.* Now the Tenant ſhall have a Writ of Diſceit againſt the demandant and his Atturney, and the form of the Writ ſhall be in the nature of *Audita querela*, and ſhall be directed unto the Juſtices of the Common Pleas, and is ſuch: 17 E. 3. 51. Diſceit. 39

The K. to his Juſtic. of the Bench greet. hath ſhown to us J *of* B, *that whereas* W *of* B *Lately had impleaded him* J *before you in the Bench foreſ. by our Writ of one meſſage, &c. in* B *and the plea foreſ. touking the inqueſt of the County proſecuted was, and day to the parties foreſ. from the day of Eaſt laſt paſt, &c. to fifteen daies given was, at which day the ſame* J *himſelf cauſed to be eſſoyned, and that eſſoyn. adjudg. and adjourned was to the fifteenth of Trin. then next following, and the foreſ.* W *and his attorn. colluſion being betwixt them before had machinating the foreſ.* J *of the tenement foreſ. to diſherit.* S *of* F *ſerv. of him* W. B. *and* W. P. *the attorn. of him* J *himſelf the ſame altogether ignorant of to be recorded in the files of Writs for the fifteenth of Eaſt. in the Bench foreſ. and a certain challenge upon the ſaid eſſoin to be put cauſed, and the eſſoin. foreſ. becauſe the foreſ.* J *his attor. in the ſame plea hat not, to be caſt affirmed, that at the ſaid xv. of hol. Trin ſciſin of the ten foreſ. for that that the atturny of the foreſ.* J *at the ſaid quindene of Eaſt. eſſoyned was not, which to the ſame* W *of* B *by conſideration of the Court was adjudged, in deceit of our Court foreſ. and to the grievous damage of him* J *and diſcreſion manifeſt. upon which the ſame* J *by his petition before us. and our Councel in our Parliam. exhibited, us has ſupplicated that him a remedy provide we will in this part, and becauſe the foreſ* W. P. *upon the premiſſes before you in the Bench foreſ ſpoke to, thoſe acknowledged as is ſaid, we command you, that hearing the pleint of him* A *upon the premiſes, and calling before you as well the foreſ.* W *of* B *and* W *of* P, *as* S *of* F, *and having ſeverally heard their reaſons, if by the inqueſt ſo thereupon to be done, or by recogniſ. of the ſame* W. W.

and

and S. or of any of them to you may be manifeſt, that J *the tenements foref. by colluſion foref. had loſt, as is ſaid, then as well upon the deceit and colluſion, as upon the recovery of the tenements foref. to be had, as well to us as the foref.* J *compliſhment of juſtice to be made cauſe you, as of right is to be done. Witneſſe.*

If a Notary or other perſon of covin counterfeit the Seal of any Parſon, or Vicar, and forge Letters of Reſignation of his Parſonage or Vicarage, in the name of the Parſon or Vicar of his Benefice, he ſhall thereupon have a Writ of Diſceit, and the Writ is in the Regiſter. But whether by that he ſhall be reſtored unto his Benefice, *Quare*, it ſeemeth not; becauſe the removing of him is a ſpirituall act. K

[100]

If two ſeverall men come before the Major of the Staple, or before other Major of a Town, and there one acknowledgeth unto the other of 100li in the name of another man, affirming him to be ſuch a perſon, which in truth he is not; for which the other perſon is troubled, and ſued upon the Statute, and taken in Execution, *&c.* he ſhall have a Writ of Diſceit againſt the two perſons, *&c.* and ſhall recover damages againſt them. A

And ſo if a man be bounden unto a Prior by a Statute-Merchant in 40li, to be paid at a day certain, *&c.* at which day he payeth the money unto the Prior, *&c.* and afterwards other perſon in the Priors name, cauſe the Statute to be certified in the Chancery, and ſue Execution thereupon, the Prior not knowing thereof, he who was bounden and hath paid the money, ſhall have a Writ of Diſceit againſt the Prior, and thoſe who ſued the Execution in his name. B

If the Eſcheator by virtue of a Writ directed unto him, doth ſeize into the Kings hands the lands of any perſon who holdeth of the King in Chief, by which the King commits the wardſhip of thoſe Lands unto another, who grants them over unto another during the nonage of the heir; Now if the under Eſcheator of his own authority return another Office without Enqueſt *&c.* and diſturbeth the poſſeſſion of the ſecond grantee, the ſecond grantee ſhall have a Writ of Diſceit againſt the under Eſcheator, and ſo if the Eſcheator, of his own authority have ſo done without taking any enqueſt, *&c.* according to the courſe of Law; and theſe Writs are in the Regiſter. C

And thereby it appeareth, that an Eſcheator may have an under Eſcheat, as well as the Sheriff may have an under Sheriff.

And

D And also it appeareth, That an Escheator shall be punished, although he be an Officer of Record, if he return any Office *virtute Officii*, of which he taketh not any enquest to enquire of the same: and the proces in the Writ of Disceit, is Attachment, and Distringas, *&c.*

Writ de Parco fracto.

E A Writ of *Parco fracto* lyeth, where a man distreyn tt h
Cattell for doing feasance, or for Rent, or service, an i
put them into the common pound, or into another pound o r
place, which shall be said to be a lawfull pound; and he who hath property in the Cattell or other person taketh the Cattell out of the said pound, and driveth them where he pleaseth; he who distreyned them for, *&c.* shall have the Writ *de Parco fracto.*

If a man sendeth his servant to distreyn for rent or services, and the servant distreyneth the Cattell, and impoundeth them, and a stranger taketh them out of the pound, the Master shall have the *Parco fracto*, and not the servant, for it is the Masters pound.

If a man distreyn for Rent, or services, or for damage feasance, and put the Cattell in the Land or close of a friend with his licence, and he who oweth the Cattell taketh them out of the said close, he who distreyned them, shall have the Writ *de Parco fracto*, and not he whose close it is, for he who oweth the close ought to have an action, *Quare clausum fregit*, &c. for that it is not his pound, but the pound of him who distreyned the Cattell: and the form of the Writ is;

5 H. 7. 9. it is a pound as well as if it were in his several, Fairfaic. cont.

F *The K. to the Sher. of* Linc. *greet. If* A, &c. *then put*, &c. B *to show why, whereas the same* A *in his damage at* N *certain beasts* Or thus: *The beasts of the forest.* B *had taken, and those accord. to law and custom of our Realm there had impounded, the same* B *that pound with force and arms hath broken, and the beasts forest. taken and led away, and other things enormous to him done, to the grievous damage*, &c.

And note, That this Writ is, *vi & armis*, and he shall not shew in the Writ, what-kinde of Cattell they are, nor to whom the property of the Cattell do appertain, if he please not so to do.

G And if a man send his servant for to distreyn for rent, or services, or for damage feasance, then the form of the Writ is such;

To

To ſhow why, whereas the ſame A, *in his damage at* N *by* B *his ſervant a certain* Ox, *or certain beaſts to be taken he cauſed, and the ſame* B *that* Ox. Or thus: *Thoſe beaſts accord. to Law and cuſt. of our Realm of* Engl. *there impound. the foreſ.* C *that pound with force and arms broke*, &c. Or thus: *For an Abbot to ſhow why, whereas the ſame Abbot in his damage in the ſuburbs of* Linc. *by Friar* J *Warden of his Cell of* S^t. Mary Magdal. *without* Linc. *certain beaſts*, &c *otherwiſe for default in the Lords Court*, &c. *why, whereas the ſame* A *in his fee at* N *by his ſervant the beaſts of the foreſ.* B *for a certain default, which the ſame* B *made in the Court of the ſame* A, *againſt* E *in the plea which was in the ſame Court betwixt*, &c. *by conſideration of our Court foreſ. to be taken had cauſed, the ſame* A *thoſe beaſts accord. to law*, &c. *had impounded, the foreſ.* B *the pound*, &c.

If a man do diſtreyn for Amercement in a Hundred, and H impound the Cattell, and the other taketh them out, the Writ ſhall be;

Why, whereas the ſame A *by* B *and* C *his Baylies of the hundred of* N, *certain labouring beaſts of him* F *at* S, *within the precinct of the hund. foreſ. for a certain amercement, to which the ſame* F *amerced was in the ſame hundred to the uſe of the foreſ.* A *to be levied, to be taken he had cauſed, and the ſame* B *and* C *the*, &c. *beaſts*, &c.

41 E. 3. 26. 47 E. 3. 13. 11 H. 7. 15. [101] And in this Writ he ought to ſhew, that the property of the Cattel were in him who was amerced, becauſe he cannot diſtreyn the Cattell of other men for this amercement: but for rent or ſervice it is otherwiſe; for the party may diſtreyn the Cattell there levant and couchant upon the Lands.

If the Queen do diſtreyn for a debt or amercement due unto her, and impound the Cattell, and a ſtranger doth break the pound and take them out, then ſhe ſhall have a Writ, and the Writ ſhall be ſuch:

The K. *to the Sher. of* S *greet. Put by gage*, &c. P *of* E *and* C *of* D, *that they be*, &c. *to anſw. as well us, as* Anne *the Queen of* Engl. *why, whereas* W K *Baily of the Liberty of the foreſt. Queen of the Hundred of* C, *in which the ſame Queen as in her other Lands and Tenements by us granted hath the return of all our Writs, as to him* W *by reaſon of his Office belongeth, by vertue of return of a certain Writ to him by thee into the liberty foreſt made for a certain debt to the uſe of the foreſt. Queen of the foreſt.* P *by ſum. of our Exchequ. to be levied, the beaſts of*

the

the ſoref. P at B had taken, and thoſe accord. to Law and cuſtom of our Realm there impounded, the foref. P and C that pound with force and arms have broken, and thoſe beaſts took and led away, and other things enormous there have done, to the contempt of us, and grievous damage of her the Queen, and againſt our peace, &c.

A And When the Queen ſueth any Writ, the Writ ſhall not ſay; *If Anne the Queen of* Engl. *ſhall ſecure thee, &c.* for ſhe ſhall not finde ſureties as a common perſon ſhall do, for ſhe ſhall not be amerced, as appeareth by the Writ before. 18 E. 3. 21. Lit. 133.

B If the Husband do diſtreyn for Rent or ſervices which he hath in right of his Wife, and a ſtranger taketh them out of the pound, the Husband ſhall have the Writ *de Parco fracto* in his own name: but yet it ſeemeth he may ſue the ſame in his name and in the name of the Wife, and joyn the Wife with him, *tamen quære.*

Writ of Reſcous.

C THe Writ of Reſcous lyeth, where a man doth diſtreyn for Rent or ſervices, or for damage feaſance, or would impeach or impound the Cattel, and the other party doth reſcous them, or taketh them from him, then he ſhall have this Writ of Reſcous; and the Writ is ſuch:

D *The K. to the Sher. &c. If A ſhall, &c. then put, &c. to ſhow why, whereas the ſame* A *in his damage at* S, *certain beaſts.* Or thus: *the beaſts of the foref.* B *had taken, and thoſe there accord. to Law and cuſt. of our Realm of* Engl. *have impounded, would, the foref.* B *the beaſts foref. with force and arms reſcued, and other, &c.* Or thus: *Why, whereas the ſame* A *in his fee at* S, *for his cuſtoms and ſervices to him due, by* C *his ſervant certain beaſts to be taken.* Or thus: *a certain Cart of his* B *to be taken had cauſed, and the ſaid Cart to the Manor of the foref.* A *of* S *accord. &c. have brought would, the foref.* B *that Cart with force, &c. upon him aſſault made, &c.*

And ſo it appeareth he may joyn in a Writ of Reſcous, the aſſault and battery of his ſervant.

E And if he do diſtreyn Cattell, and other dead chattels, then the Writ ſhall be:

To ſhow why, whereas the ſame A *in his fee at* S, *for his cuſtomes and ſervices to him due, the beaſts and chattels of the foref.* B *had taken, and thoſe beaſts have impounded, and the chattels*

foreſ. in name of diſtreſs accord. to Law and cuſtom of our Realm of Engl. *have detcyned would, the ſame* B *thoſe beaſts reſcued, and the chattels foreſ. took away, and other,* &c.

And if he do diſtreyn for a Rent-charge, the Writ is ſuch:

Why, whereas the ſame A *in a certain Tenement of him* B *at* N *for a certain annual Rent, by a certain writing obligatory, with the diſtres of him* A *bound, for the rent foreſ. behind being, certain chattels of him* B *had taken, and thoſe in name of diſtreſs accord. to Law and cuſtom there have deteined would, the foreſ.* B *the chattels foreſ.* &c.

And note, That if a man ſend his ſervant to diſtreyn F for rent, or ſervice, or damage feaſance, and Reſcous be made unto the ſervant, the Maſter ſhall have the Writ of Reſcous and not the ſervant, for the wrong is done unto him who ought to have the Rent or ſervice, or is damnified, *&c.*

If a Collector or ſub-Collector diſtreyn for Fifteens, and G Reſcous be made, he ſhall have the Writ of Reſcous, and the Writ ſhall be ſuch:

Why if W *of* S *Sub-collector of the Tenth in our Town of* S *by the Citizens and Burgeſſes of our Realm laſt granted,* &c. *ſhall thee,* &c. *then put* B. &c. *to anſwer as well us as the foreſ.* W, *why, whereas the ſame* W *certain chattels of him* B *for a certain ſumme of money by reaſon of the Tenth foreſ. aſſeſſed had taken, and thoſe chattels there in name of diſtreſs in our name have would, the foreſ.* B *thoſe chattels from the foreſ.* W *there with force and arms took, and upon him* W *there aſſault made, and him beat and wounded.* &c. *and other,* &c. *to our contempt and prejudice, and the grievous damage of him* W, *and againſt our peace.*

And if the Bayliffs or Officers do arreſt certain perſons, and others reſcue them from the Officers, then he who cauſed them to be arreſted ſhall have the Writ of Reſcous, and the Writ ſhall be ſuch:

Why whereas the ſame Prior by Charter of the Lord E, *which we have looked upon, to have ought at* W *his free Court of all his men as well Burgeſs. as others, and of all pleas and plaints, and attachments whatſoever coming. together with priſes, and all other things to his men belong. and the ſame Prior by* B *his Baily at* F.R *and* M, *the men of him the Prior, for divers treſp. at* T *within the liberty of the foreſ. Prior by them as is ſaid done,*

done, whereupon the Huc and Cry there levied was, to be attached had cauſed, and the ſame Prior, them R *and* M *there accord. to Law and cuſt. have detained would, juſtice in this part in the Court of the Prior foreſ. to undergo, the foreſ.* B *and* L. *the foreſ.* R *and* M *of the foreſ treſp. not juſtif. from the cuſtody of the foreſ.* B *with force and arms took, and whether they would to go permitted, and other things enormous, &c. to the grievous damage of him the Prior, and of his liberty hurt manifeſt, and againſt our peace.* [102]

And note, That if the Baily, or Sheriff, or other Officer of the King do arreſt a man, or diſtreyn him for debt, or other ſervice due to the King, and Reſcous is made, then the Baily or other Officer ſhall have the Writ of Reſcous in his own name, and not the King, and the Writ ſhall be ſuch:

If T *Baily of the Hundred of* F, *ſhall*, &c. *then put*, &c. *to anſwer as well us as the foreſ. Baily; why, whereas the ſame Baily, accord. to the duty of his Office,* W *whom by our Sher. of the Coun. foreſ. by our Writ of Judgement to him directed to be taken, we commanded, at* K *by virtue of our mandate foreſ. had taken, and him to our Caſtle of* R. *in our priſon there to abide would have, the foreſ.* R *and* S *him* W *at our ſaid Town of* K, *with force and arms reſcued, and other*, &c. *to the contempt of us, and grievous damage of the foreſ. Baily, and againſt our peace, and have*, &c.

A And if the Baily would arreſt any perſon, and he himſelf do reſcue himſelf, and will not obey the arreſt, then the Writ ſhall be ſuch:

If H *of* R, *Baily of our Town of* S, *ſhall*, &c. *then put* B, &c. *why, whereas the ſame* H *accord. to duty of his Office, the foreſ.* B *for a certain Hue upon him by* W *of* S *at* C *levied, at the plaint of the foreſ.* W, *accord. to Law and cuſtom of our Realm had attached, the foreſ.* B *himſelf to be juſticed not permitting, the attachment foreſ. with force and arms broke, and upon him* H *there aſſault*, &c.

B And if the Sheriff ſend unto the Baily of the Liberty to levy fines and amercements for the King, and the Bayly diſtreyn certain Cattell, and reſcous is made; Now the Lord of the Liberty ſhall have the Writ of Reſcous of the Reſcous done to his Baily, and for the battery and aſſault made upon him, and for the loſſe of his ſervice, and all in one Writ.

If the Kings Bayliff do diſtreyn for rent, and reſcous is C
made, the Bayliff ſhall have the Writ of Reſcous and not the King.

And if a man ſue forth an Execution, and hath a *Capias* directed to the Sheriff to arreſt the party, and the Sheriff make his warrant to the Bayliffe of the Queens Libertie, where the party dwelleth to arreſt him, by which the Bayliff doth arreſt him, and others do reſcue him from the Bayliff, he who ſued forth the Writ of Execution ſhall have the Writ of Reſcous againſt them that reſcued him, as appeareth by the Regiſter, but yet it ſeems reaſonable that the Bayliff have the Writ of Reſcous in ſuch caſe, for ſome ſay the Bayliff ſhall be chargeable to him, who ſued forth the *Capias*, *&c.* and for the arreſt, *Tamen quare.*

And it appeareth by the Regiſter, That if a Writ be dire- D
cted unto the Sheriff, to levy the expences of the Knights at the Parliament, and the Sheriff make his warrant unto the Bayliff of the Liberty of the Biſhop of *Eli*, to levy the ſumme aſſeſſed, *&c.* for which the Baily by his under-Bayliff doth take certain Cattell and would impound them, and other perſons do reſcue the Cattell and beat the under-Bayliff, that the Bayliff ſhall have the Writ of Reſcous againſt them; And there it ſeemeth that the Knights which ſhould have the money, ſhall not have a Writ of Reſcous for the ſame Reſcous, becauſe it is not a duty unto them by any perſon certain, but to be levied of the Inhabitants of the Towns.

And if the Lord do diſtreyn his Tenants Cattell, and a E
ſtrangers Cattell, for Rent or Service behinde, when there is not any Rent or Service behinde; the ſtranger may reſcue his own Cattell, but not the Tenants, as it ſeemeth. And that as it ſeemeth by the Statute of *Marlebridge*, *cap.* 3. which willeth, *Non ideo puniatur Dominus per redemptionem.* yet the opinion of *Thorpe M.* 31. *E.* 3. is contrary, for he ſaith, the ſtranger may reſcue as well the Tenants Cattell as his own, *Quare.*

vide Lit. 52. 21 H. 7. 4. And Reſcous is not, but where he hath the poſſeſſion of F
the Cattell, or the thing of which the Reſcous is ſuppoſed to be made; For if a man come to arreſt a man, or to diſtreyn, and he is diſturbed to do the ſame, he ſhall not have a Writ of Reſcous, but an Action upon the Caſe.

And the King ſhall not have the Writ for a Reſcous done G
to

to his Officer, *qd. vide P.* 20. *E.* 3. but he may cause him to be indicted for the same.

Audita Querela.

HThis Writ of *Audita querela* lieth as well upon matter in fact, as upon matter in writing, as after appears. And this Writ shall be directed unto the Justices of the Common Pleas or Kings-Bench, and lieth where *A* and *B* come before the Major, *&c.* and *B* doth acknowledge himself to be bounden in 100*li.* to *A* in the name of *C* before the Major; and affirmeth his name is *C*, and afterwards *C* is arrested by force of this Bond and Statute, and taken in Execution; Now *C* shall have *Audita querela* against *A* and *B*; and the form is such:

2 R. 3. 8. 15. *E.* 4. 5. 43. Ass. *Br.* Audita Quer. 31. 12 *H.* 4. 6.

The K. to his Justic. of the Bench greet. The plaint of C *we have received contain. that* A *and* B *by collusion betwixt them at* W *before had, our Court to delude, and the f ref.* C *craftily to grieve machinating, lately before* R *Major of our Town of* Southampton, *and* R *Clerk, for Recognis of debts at* S *recept. deputed appearing himself* C, &c. *his Oath corporal to this given to be affirmed, by which the same* B, *under the name of the same* C *the fores.* A. C. L. *at a certain term now past to pay before the same Major and Clark accord. to form of the Statute, lately at* Acton Burnel *for Merchants set forth himself to owe, acknowledge, and after him* C, *for that he the fores.* C. L. *to the fores.* A *at the term fores. paied not, by the fores. Major to be taken, and in our prison safely to be kept, until the same* A *of the same* C. L. *fully he should satisfie, falsly and maliciously procured, to the no small damage of the same* C, *and deceit of our Court manifest. Upon which the same* C *us hath supplicated that for him remedy congruous apply we would, we command you that hearing the plaints of him* C *in this part, and calling before you the fores.* A *and* B, *and fores. Major and Clark, and having heard severally the reasons of the parties, to the same* C *of the falsness, malice and deceit fores. full and speedy Justice to be done, you cause, as of right, and accord. to our custom of our Relam, you shall see is to be done. Witnesse,* &c.

[103]

A If a man lease Lands unto *A* for life, and afterwards by fine grants the reversion unto *B* in Fee, and dieth, and the heir of the Recognisor, and one *L* by Covin betwixt them sue a *Præcipe in Capite* against the said *A*, supposing the Land

to be holden of the King, whereas it is not holden of the King, but of another perſon: And in this *Præcipe in Capite* they cauſe one F to appear as Atturney for *A*, and to joyn the Miſ. in the ſaid Writ; and afterwards the Atturny by Covin doth make default, for which Judgement is given againſt *A*. Now upon the ſame matter he ſhall have an *Audita Querela* directed unto the Juſtices of the Common Pleas, commanding them to proceed as well for the reſtitution of the Land, as upon the Diſceits, and to do ſpeedy Juſtice, as of right accord ing unto the cuſtom of the Realm they ought to do. And the Writ is ſuch:

The K. to his Juſtic. of the Bench greet. ſhown hath to us A, *That whereas he lately the Mannor of* & *with the apprut. in the Coun. of* L, *for term of his life, held of the demiſe of* J *and* H, *ſon and heir of the foreſ.* J, *the Mannor foreſ. to* T *of* S, *and the heirs of the body of him* T *iſſuing as is ſaid by fine thereof in our Court before our Juſtice of the Bench at* W *levied after the death of the foreſ.* A *to have granted* B *the ſon and heir of the foreſ.* H *and* L, *colluſion betwixt them before had, the foreſ.* A *from the foreſ. mannor to amove, and the foreſ.* T *from the reverſ. of the mannor foreſ. to exclude machinating; Our Writ (called* Præcipe in capite*) to our Sher. of* Leic. *at a certain day now paſt returnable of the mannor foreſ as if the ſame mannor of us were held in chief, whereas it is not held under the name of the foreſ.* E *againſt the foreſ.* A *and* T *in our Chanc. to be obteined, and our Writ foreſ. by which the foreſ.* A *and* T *accord. to form of the Writ foreſ. ſum. were to be before you at the day foreſ by the foreſ. Sher. return, and a certain unknown who himſelf* R *of* S *to be named, affirmed, before you in the Bench foreſ. to appear to loſe or win in the plea foreſ. by the foreſ.* A *and* T *attorn. of thoſe* A *and* T *of the obteining of this Writ ſum. and the atturney foreſ. under their name, as is promiſed, made altogether ignorant of, falſly and maliciouſly procured, and the foreſ. attorn. at the ſame day before you appearing put himſelf upon our grand aſſize, and demanded recogniſ. to be made, whether the ſame* A *and* T *greater right have of holding the ſaid mannor with the appurten. as that they held, or the foreſ.* E *to have the ſaid mannor, as that he hath demanded, by which by default which the ſame* A *and* T *after made, in the ſame Court by you it was conſidered there, that the foreſ.* E *ſhould recover his ſeiſin of the foreſ. mannor with the apparten. againſt the foreſ.* A *and* T *to be held to the ſame* E *and his heirs, quiet of the foreſ.* A

and

and T *and their heirs for ever, by pretext of which conſideration, the foreſ.* A *from his mannor foreſ. with the appurten perpetually amoved is, to the no ſmall damage of him* A, *and of our Court deceit manifeſt. Upon which the foreſ.* A *us hath ſupplicated congruous remedy for him to apply. We ſuch colluſion, malice and deceit to paſs over not willing unpuniſhed you command that having heard the plaints of him* A *in this part, and having called before you the foreſ.* A *and* L, *and others in this part whom you ſhall ſee to be called, and having heard ſeverally the reaſons of the parties, further to the ſame* A *as well upon the reſtitution and recovery of the ſaid mannor, as upon the colluſion, malice and deceit foreſ full and ſpeedy Juſtice to be done you cauſe, as of right, and accord. to Law and Cuſtom of our Realm, &c. is to be done. Witneſſe, &c.*

And by this Writ it ſeemeth the Juſtices ought to make void the recovery, if they finde the Deceit, *&c.* yet it ſeemeth they may not ſo do.

B If a man be bound in a Statute Merchant, and afterwards maketh a Feoffment of parcel of his Lands unto another man, and of other parcel unto another, and the Recogniſee ſueth Execution upon the Statute, and hath Execution againſt one Feoffee, that Feoffee ſhall have an *Audita Querela* againſt the other Feoffee, to ſhew cauſe why he ſhould not have Execution of his Lands, as of the Lands which himſelf hath. 9 H. 4. 4. 34. F. 3. Execut. 127. 45 E. 3. 31. 16. Eliz. Dy. 332. 48. F. 3. 5. 2. & 3. Eliz. Dy. 193 104. Whaley's caſe.

C If a man be bounden in a Statute-Merchant, and certain Indentures of Defeaſance are made of the ſaid Statute, and afterwards the Conuſer doth arreſt the Recogniſor and impriſoneth him, and taketh the defeaſance from him, and then ſueth Execution upon the Statute, the Recogniſor ſhall have an *Audita Querela* againſt him upon the whole matter. [104]

A If at the *Niſi prius* in Treſpaſs it be found for the Plaintiff and damages aſſeſſed, and before the day in Bank the Plaintiff releaſe unto the Defendant all actions and Demands, and afterwards prayeth Judgement, and ſueth Execution thereupon, the Defendant upon that Releaſe ſhall have an *Audita querela.* 40 Aſſ. 23. 44 Aſſ. 15. Holt. Br. Audit. Querela. 43. 9 H. 5. 1. Br. Audit. Querr. 16 36 H. 6. 24. 2 E 21 H. 7. 33

2 H. 4. *Br.* Audita Querela 37 Fitz. Releaſ. 53. Releaſe of all actions is no ſufficient matter to have Audita Querela.

48 E. 3. 5. 25 H. 8. 5. Vid. 2. & 3. E. liz. Dy. 193.

And the heir of the Recogniſee may ſue an *Audita querela*, if he have matter in writing to diſcharge the Execution. B

43 E. 3. 28. Finchden.

If a man be bound in a Statute-Merchant or Staple, and afterwards payeth the money according to the Statute, and hath the Statute delivered unto him, and cancelleth the ſame, and afterwards the Recogniſor forgeth a new Statute in the name of the Recogniſor, the Recogniſee upon the Statute cancelled ſhall have an *Audita querela*. C

43 E. 3. 27. con. 12. h. 4. 6. Calp. conc.

If a Statute-Merchant or Staple be made by one unto another, and delivered into the hand of a ſtranger to deliver upon Conditions performed, and the ſtranger doth deliver the Statute before the Conditions performed, and the Conuſee ſueth Execution thereupon, the Recogniſor ſhall have an *Audita querela*. D

12 H. 4. 15. & 16. Frankford.

If a man ſueth forth an Execution upon a Statute, and hath Execution, and afterwards grant over his Eſtate, the Recogniſor ſhall have an *Audita querela* againſt the Grantee without amoving him who ſued the Execution, if he have matter in writing for to ſhew, &c. E

41 E. 3. Aud. quer. 18.

A man may ſue an *Audita querela* againſt the Recogniſee, becauſe he hath purchaſed a Mannor unto which the Recogniſee is a villeyne regardant, and yet he may enter and ſeiſe the Recogniſee without ſuch ſuit. F

46 E. 3. 28. Fulthorp. 17 Aſſ. 24. Audit quer. 20. 10 E. 3. 25. Error 71. the Feoffee had Error.

And a ſtranger who made not the Recogniſance, nor was Tenant of the Land at the time of the ſuing forth of the Execution, ſhall have an *Audita querela*, if he have matter of Diſcharge in writing. *Vide* 11. *E.* 3. *Litt. Aſſ.* and there it is ſaid the ſame is given by the Statute. The Feoffee ſhall not have a Writ of Error, &c. Nor the Feoffee of the Conuſor of part of the Lands ſhall not have an *Audita querela* untill his Lands be taken in Execution. G

18 E. 3. 36. Audit. quer. 9. the Conuſor muſt ſhew the Stat. otherwiſe he ſhall not have the plea.

If a man ſueth *Audita querela* againſt the Conuſee, and ſheweth a Statute cancelled; and ſaith the ſame was delivered to him in lieu of Acquittance, the Recogniſee may ſhew the true Statute, and ſhew that the Statute ſhewed which was cancelled was a forged Statute, and thereupon he ſhall have a Writ unto the Juſtices in the nature of *Audita querela*, commanding them that they ſend for the Major and the Clark, and for the parties, and for to do right; and the Examination of the H

of the Major and Clark ſhall try and end the matter, *q. vide M.* 11. *E.* 1.

I Upon a Recovery of a Debt, if he ſue a *Scire facias*, and the Sheriff return *nihil*, by which an Execution is awarded, the Defendant ſhall have *Audita querela*, if he have a Releaſe or Acquittance, becauſe he was not warned: But if the Sheriff hath returned him warned, he ſhall not have *Audita querela* upon ſuch releaſe, *&c.* becauſe he might have pleaded the ſame upon the return of the *Scire Facias*. 48 E. 3. 20. 12 H. 4. 4. *per Hungerf.* 21 E. 3. 15. Bil. Audita Querela 18. 6 E. 7. Eliz. Dy. 232. rule that the Writ doth not lie after he cometh of full age.

K And if an Infant binde himſelf in a Statute-Merchant or Staple, he ſhall have an *Audita querela*, during his Nonage to avoid that Statute; and afterwards he ſhall have an *Audita querela* after his full age to avoid that Statute upon that matter in Fact. 13 E. 3. 2.

L And ſo if a man make a Statute-Merchant or Staple by dureſs, he ſhall have an *Audita querela* to avoid that Statute by this impriſonment. 18 E. 3. 8. 15 E. 4, 5. *Briap.* 20. 20 E. 3. Aud. quer. 27

M If two be ſeverally bounden in two ſeverall Statutes, and afterwards the Recogniſee by deed doth releaſe both the Statutes to one of them, if he ſue Execution againſt them ſeverally, they ſhall joyn in an *Audita querela* upon that Releaſe. 20 E. 3. Aud. querela 28.

N If the Recogniſor enfeoffe a ſtranger of parcell of the Lands, and afterwards enfeoffeth the Recogniſee of another parcel of the Lands, and afterwards the Recogniſee ſueth Execution againſt the Recogniſor and the Feoffee, The Feoffee ſhall have an *Audita querela* againſt the Recogniſee, and diſcharge his Lands, becauſe that the Recogniſee hath diſcharged his parcel of Land which he purchaſed by his own Act. 25 H. 8. Br. Aud. quer. 39

O Upon an *Audita querela* ſued, he ſhall have a *Superſedeas* in the ſame Writ to ſtay Execution, *&c.* But if he be Nonſuit, he may have a new *Audita querela*, but then he ſhall not have a *Superſedeas* to ſtay Execution. 24 E. 3. 24. Br. Audit. quer. 22. 9 *H.* 5. 1.

P And a man ſhall not have an *Audita querela*, ſuppoſing the Recogniſee will ſue Execution, but it ought be alledged in the Writ, that he hath *in facto* ſued Execution.

Q If a man ſue *Audita querela* upon a Releaſe, and afterwards is Nonſuit, he ſhall not have an *Audita querela* upon new matter, *ut dicitur*, 43. *E.* 3. But it ſeemeth the Law is other- 43 E. 3. 28. Trip.

24 E. 2. *Audita querela.* 21.

otherwiſe, but he ſhall not delay Execution by a new *Audita querela.*

44 E. 3. 36. 24 E. 3. 27. Br. *Audita querela* 24.

If a man doth comprehend two matters in the *Audita querela* to extinguiſh the Execution, yet the Writ is good, but the plaintiff ſhall hold himſelf to one matter, and the defendant ſhall anſwer to that. And variance betwixt the *Audita querela*, and the Record ſhall abate the Writ. But there in a new *Audita querela* ſued according to the Record, he ſhall have a Superſedeas to ſtay Execution, *&c.* although he had before a Superſedeas in the other *Audita querela*, which was abated. R

vid. 22 H. 6. 36.

If a man ſue Execution upon a Statute merchant, and hath a *Capias* returned in the Common Pleas, If the Feoffees or parties will ſue an *Audita querela*; the ought to ſue the ſame out of the Chancery, directed unto the Juſtices of the Common Pleas. S

2 R. 3. 8. *cem.* if the teſtator be living.

If a man ſue an Execution upon a Statute merchant as Executor unto another; they party ſhall not have an *Audita querela*, ſuppoſing in the Writ that he who ſueth Execution is not Executor. T

24 E. 3. 30. Br. *Audita querela* 41. 48 E. 3. 1. he ſhall not have *Capias* but *ſcias alias.*

And the proceſs in *Audita querela* is *Venire facias* and *Diſtringas. Alias* and *Pluries Diſtring.* and if he return *Nihil*, or *Non eſt inventus*, he ſhall have a *Capias* againſt the defendant. *T.* 18 *E.* 3.

[105]

A man recovereth by default in an action of Waſt, the defendant ſueth an *Audita querela*, directed unto the Juſtices out of the Chancery, ſummiting in the Writ, that he was not ſummoned, nor attached, nor diſtreyned; For which the Juſtices grant out of the Rolls in the Common Pleas, a Writ of Diſceit againſt the *Audita querela*, which is but a commandment to the Juſtices, to do right unto the party *&c. Trin.* 19. *E.* 3. And yet they ſhall proceed upon the Writ of Diſceit, and not upon the *Audita querela.* A

12 H. 4. 6. & 15.

22 H. 6. 56.

If a man be bounden in a Recognizance in the Common Pleas, and afterwards doth releaſe unto the party, and then againſt his Releaſe ſueth Execution; Then he ſhall there come into the Common Pleas, and ſhall ſue an *Audita querela* thereupon out of the Rolls. And ſo if one recover in the Common Pleas or Kings Bench, debt or damages, and afterwards by his deed releaſeth the ſame, and afterwards ſueth forth Execution upon the Recovery, the party to whom he releaſed ſhall have *Audita querela*, out of the Common Pleas B

or Kings Bench where the Record is, and yet he may have an *Audita querela* out of the Chancery, and ſo it ſhall be ſometimes Judiciall, and ſometimes Originall.

C And if a man be bounden in a Statute Merchant or Staple unto another man, and afterwards the Recogniſee make a defeaſance unto the Recogniſor; now if the Recogniſee ſue execution upon the Statute againſt the form of the Indentures, the Recogniſor (or his Executors if he be dead) may have an *Audita querela* againſt the Recogniſee. 45 E. 33. 48 E. 3. 12. 47 E. 3. 5. 47 E. 3. 25.

D And it appeareth in the Regiſter, That a Writ of *Audita querela* lyeth for an Infant who hath entred a Statute Merchant or a Statute Staple during his nonage, if he be yet within age.

E And another *Audita querela* appeareth in the Regiſter for the Feoffee; of parcell of the Land which belongeth to the Recogniſor againſt the Recogniſee, becauſe that the Recogniſee hath purchaſed other parcell of the Lands of the Recogniſor, *&c.*

F If a man be arreſted ad impriſoned upon a Statute Merchant, and afterwards the Recogniſee doth releaſe unto the Recogniſor, or he pay the debt, and hath acquittance, or pay parcell and hath a releaſe for the reſidue; Then they may come into the Chancery, and there finde ſurety, body for body, to be in the Chancery at a certain day, and there to pay the money, *&c.* if he cannot diſcharge himſelf by acquittance or releaſe; and thereupon he ſhall have a Writ unto the Sheriff where he is in ward, rehearſing how he hath found ſureties in the Chancery, commanding him for to deliver him, if he keep him in priſon for that cauſe, and for no other cauſe, and upon that he may have an *Alias* and a *Pluries* and attachment againſt the Sheriff if he will not deliver him, *&c.*

But if a man be arreſted and impriſoned upon a Statute ſtaple, and he hath acquittance or releaſe to diſcharge himſelf, then if he will ſue *Audita querela*, or a *Scire facias* to avoid the Execution of that Statute, he ought for to give ſurety as well to the party, as unto the King in the Chancery, ſeverally in a certain ſum, *&c.* to ſue with effect, and to render his body, or pay the money, *&c.* otherwiſe he ſhall not be delivered out of priſon: and the ſame is by force of the Statute of 11 *H.6. cap.*10.

Writ of Attaint.

old. 4 M. 2. Br. Attaint 127. it lieth not upon an i formar. 40 E. 3. 31.

THe Writ of Attaint lieth where false Verdict is given in a Court of Record against the Plaintiff, or Defendant, or against the Demandant or Tenant in a plea real or personall sued by Writ or by Bill; if the debt or dammages do exceed 40 s. then he against whom the Verdict passed shall have a Writ of Attaint, and the Writ shall be such: if it be in an Action of Trespas in the Kings Bench. G

If E *of* L *shall secure thee, &c. then sum. &c.* xxiiij. *legal Knights of the vencw of* N, *that they be before us at* B *in the Octav. of* S^t. Hill. *ready by oath to recognise, whether the Jurors by whom a certain inquest lately taken was before us at* B, *by our Writ, betwixt* J *and* M *his wife, and the forel.* S *of a certain tresp. to the same* M *by the forel.* S *done (as is said) false oath made, as the same* S *to us grievously complaining hath shown, and in the mean time diligently inquire thou who were the jur. of the first inquest, &c. and those then have before the forel. Just. &c. or before us, &c.* as the Case is and lieth. H

And by the Statute of *West.* 1. *cap.* 38. a man shall have an Attaint in a plea of Land of Freehold, of a thing which toucheth the Freehold. I

And by the Stat. of 1 E. 3. *cap.* 6. A man shall have Attaint in Trespas. K

14 H. 14. Brian. And by the Statute of 5 E. 3. *cap.* 6. in the end of the Statute a man shall have Attaint of Trespasse sued by Bill, without Writ before Justices of Record, if the damages exceed fourty shillings. L

14 H. 7. 14. Fineux. And also a man shall have Attaint for the damages, although they be not paid, *&c.* M

And if false Verdict passe by Writ of *Nisi prius*, then the form of the Writ is: N

Ready by oath to recognise whether the jur. by whom a certain inquest lately sum. was before us, and taken before our beloved and trusty T *of* B *one of our Justic. for the pleas before us to be held assign. by our Writ of* Nisi prius *at* K *betwixt him* E *and the forel.* T *of a certain tresp.* &c.

41 E. 3. 21. 44 Ass. Br. Attaint. 133. And if the Verdict be taken within any liberty or Corporate Town, then the Writ of Attaint is such: O

Ready by oath to recogn. whether the jurors by whom a certain inquest

inquest lately sum. was, and taken at L *without our Writ before the Major and Bailies of our City of* Linc. *of the plea which was before our beloved, and trusty* S Scrope *and his companions our Justic. for the pleas before us to be held assign. betwixt* J *of* L *and the foref.* S *of a certain tresp. to the same* J *by the foref.* S *done (as is said) which plea accord. to the liberties of the City to the Citizens of our City foref. by the charters of our progenit. sometime King of Engl. and our confirmat. granted, before the same our Major and Bailies return. is plead. false oath made, as the same*, J, *to us grievously complaining hath shown, or not, and in the mean time.* &c. [106]

A And upon false verdict given in *London* upon *Nisi prius*, the form of the Writ is such:

Ready by oath to recogn. whether the jurors by whom a certain inquest lately sum. was before us and taken before R *and* M *then Justic. for the Pleas before us to be held assign having associated to himself* A *of* F *at* S^t. Martins Lond. *accord. to the libert. of the City foref. by our Writ*, &c.

B If false verdict be given in a Corporate Town, upon a plaint without Writ, then it is such:

Ready by oath to recogn. whether the jurors by whom a certain inquest lately taken was before us at Lincoln *without our Writ, betwixt* A *and* D *of a certain trespass*, &c. *done, of which tresp. the same* B *convict was, and* 20^l *to the same* A *for his damages in this part adjudged were, as is said false oath made, as the same* B, &c.

C And if false verdict be given within the verge, then the Writ shall be such:

Ready by oath to recognise whether the jur. by whom the inquest lately taken before the steward, and marsh. of our Hostel, at C *without our Writ, betwixt* R *and the foref.* T *of a certain trespass. to the same* R *by the foref.* T *at* C *within our verge, as is said done, false oath made*, &c.

D And if a man be condemned by false verdict in debt, or damages, then if he sue an attaint, he shall have a speciall Writ unto the Justices, to bail him upon sureties taken, that if the attaint passe against him, that he render himself to prison, or satisfie the debt. and the Writ is such:

The K. *to his beloved* &c. E *of* S *and his companions greet. whereas* J *hath arraigned before us by our Writ a certain Jury of xxiiij. to make convict the jurors by whom a certain inquest lately taken was before us at* W *by our Writ betwixt* R *and the foref.*

foref. L *of a certain treſp. &c. done as is ſaid, and of the part of him* L *we have received, that he by pretext of the proceſs in the foref. pleas of treſp. made, taken it, and in the priſon of our Marſhalſie before us detained, that his Jury foref. proſecute he might not, whereupon, &c. to apply, we not willing that the ſame* L *in our priſon foref. ſo be detein that he may not be able his Jury foref. to proſecute, as he ought, we command you that if the ſame* L. *finde before you ſufficient mainpern. who him ſhall mainpriſe to have before us to proſecute the attaint fore. and that attaint determined, if againſt him it ſhall paſſe, or he that attaint ſhall not proſecute, that he render himſelf to our priſon foref. and ſatisf. as well us of that which to us, as the foref.* R *of that which to him belongeth, in the premiſſes, and further do and receive what the Court ſhall conſider in this part, then him* L *from our priſon foref. to be delivered cauſe by ſuch mainpern. to proſecute the attaint foref.*

8 H. 4. 4. 11 *H.* 4. 51. *Skrea.*

And if a man vouch in a *Pracipe quod reddat* one who E entereth into the warrants and pleadeth, and loſeth by falſe Verdict, he ſhall have an attaint, and the Writ ſhall make mention of the voucher; And ſo if a man pray to be received

11 H. 4. 50. *Galeigne.* 17 E. 2. recovery in value 32. 9 H. 6. 38. for default of Tenant for life, and is received, and pleadeth, and loſeth by falſe Verdict, he ſhall have a Writ of attaint, and the Writ ſhall mention the receipt.

And ſo if it paſſe againſt the plaintiff by falſe Verdict, and F he bring an attaint, the Writ ſhall make mention of the Voucher, and of the Receipt; And ſo if he in the reverſion joyn unto the Tenant for life by Aide prayer, and they loſe, by which he in the reverſion brings an attaint, he ſhall make mention in the Writ of the Aide prayer; and alſo in Aſſiſe, if it be diſcontinued and afterwards the attachment ſued, and he loſeth by falſe Verdict, the Writ of attaint ſhall make mention of the re-attachment, becauſe he reviveth the Original of Aſſiſe.

Yet he ſhall not mention if the Tenant for life be dead. 4 Aſſ. 7. 4 E. 3. 54. Br. Attaint 49.

But if the defendant in a Writ of Detinue prayer gar- G niſhment who cometh and pleads, and the plaintiff loſeth, by which he bringeth attaint againſt the Garniſhee, the Writ of attaint ſhall make mention of the Garniſhment. That is well debated, *M.* 9. *H.* b. in the title Attaint in the Abridgments.

9 H. 6. 38.

But ſaving the opinion of the Book, it ſeemeth the Writ of attaint ſhall make mention of the Garniſhment, *&c.* for the defend. in a Writ of Detinue who ſueth the Garniſhment,

is

is in manner out of Court; And when the Garnishee comes, the plaintiff counteth upon his originall Writ, which is the Writ of Detinue, and the Garnishee shall answer to that Count; and the Writ of Garnishment is but for to make him come in and answer to the plaint. to his originall and Count, and when he comes and pleads, he pleads unto the plaint. Count, which is upon the Originall by which the plea which is between the plaint. and the Garnishee is upon the Originall plea, as it seemeth. *tamen quære.*

H And if a man plead a deed in barre, in which there are witnesses, and the deed is denied, for which proofs is awarded against the witnesses, which joyn which the Jury, and it is found the plaint. deed, Now he shall not have an attaint, *&c.* because the witnesses do affirm the Verdict by their testimonies. But if it be found not his deed, then the other party shall have an attaint, for the witnesses cannot prove a negative, but of the affirmative they may have notice whether it be his deed or not. A man shall have an attaint in speciall Case, where every word of the Verdict is true, as if a man hath had common appendant unto his land, time out of minde, and he bring an Assise of the common, and makes title that he hath had Common, time out of minde, *&c.* without speaking of the Appendancy, and it is found for him; The defendant shall have an Attaint, for the Plaintiffs title is for Common in grosse, and not Common appendant; and yet the words of the Verdict are true, that he hath had Common, time out of minde, *&c.* but not in such manner as shall be taken by the title.

11 Assiz. Br. Attaint 57. 21 Ass. 11. Challenge 132. Thorp. 11 E 3. Attaint 16. *ac.* [107]

10 E. 4. 17. *ac* Com. 291, 292.

A And so if a man have a Rent as Forrester in fee of such a Forrest time out of minde, and in Assise of that rent he make title thereunto, that he hath had a Rent out of that Land time out of minde *&c.* without saying as Forrester in fee, *&c.* and it be found for him, the other party shall have an Attaint upon that Verdict, although the words of the Verdict be true, for he hath not had such Rent by prescripion as shall be intended in taking by his title.

10 E. 4. 17. 24 H. 8. Br. Attaint 96.

B If a man recover outragious damages by Verdict, but he releaseth parcell of the damages before Judgement, and hath Judgement for the residue, the defendant shall not have an attaint for those damages which are released.

35 H. 6. 30. 12 E. 4. 5. 13 E. 4. 2. 14 H. 7. 5. 9 H. 6. 2.

C And in a Writ of Waste the plaintiff shall have a Writ to enquire of the Waste, who if they give false verdict by which the

3 H. 6. 29. *Mattes ac.*

43 E. 3. 19. cont. 35 H. 6. 25. 2 H. 4. 2. per Curiam, ſo of Error. 18 H. 8. 1. 21 H. 6. 56. ar 8 H. 5. 10. 38 E. 3. 12. & 27. Br. Collusion 18 upon Writ of Enquiry of Waſt for an Abbot, Quæ jus ſhall iſſue, which proves it is no Verdict but an Enquiry.

the plaint. recovereth, the def. ſhall have an attaint *per Curiam*, *M.* 2. *H.* 4. But I do not ſee how the ſame can be warranted by any Statute, which giveth the Attaint, becauſe the Writ of Enquiry is awarded by the Court *ex officio per Sacramentum proborum*, &c. And the Sheriff may make the enquiry by the oaths of ſix or eight perſons of the Waſt, and he is not bound to take twelve perſons. *Quere* of this.

42 E. 3. 26.

The King ſhall have an Attaint upon a falſe verdict paſſed againſt him, as well as a common perſon. D

34 H. 6. 32 ac. 12 H. 4. 5. In waſt againſt two, one made default, and the other pleaded, he who made default ſhall not have Attaint. 44 E. 36. 34 H. 6. 12. *Merle cont.* 39 H. 6. 1. ac. 8 H. 4. 23. *Trott.*

In treſpaſſe againſt two, one cometh and pleadeth Not guilty, and is found guilty, and afterwards the other cometh and pleadeth *non* guilty, and is found guilty by another Enqueſt; Now in this Caſe the firſt Jury ſhall aſſeſſe all the damages for the Treſpaſſe, and that the defendant in the laſt Enqueſt ſhall have an Attaint of the damages aſſeſſed by the firſt Enqueſt if they be outragious or exceſſive, *&c.* E

21 Aſſ. 6. Br. Attaint 64.

Tenant by Statute Merchant ſhall have an Attaint if he be barred in Aſſize by falſe verdict, or found againſt him by falſe verdict, where he is defendant in the Aſſize. F

34 *H.* 6. 13. ac. in perſonal Actions. 21 *H.* 6. 54.

If a man recover in a *Præcipe quod reddat*, againſt a Tenant by falſe verdict, there have been divers opinions whether the Tenant ſhall have an Attaint before Execution ſued out againſt him. *Vide* 41 *E.* 3. *Lib. Aſſ.* 21. *H.* 6. 60. But the Statute of 1. *E.* 3. ſaith, That a man ſhall have an Attaint of damages before Execution ſued of them, before which Statute it ſeemeth he could not have Attaint of them. But in the time of *E.* 1. the def. ſued forth an Attaint for damages upon falſe verdict given againſt him in a Writ of Treſpaſſe before the plaintiff ſued Execution of the damages, which ſee in title Attaint in the Abridgements, *temps E.* 1. And alſo by the ſame reaſon, if a man do recover Land, the Tenant ſhall not have Attaint before Execution. And *Nontenure* hath been pleaded, and admitted a good plea divers times in an Attaint. And on the other ſide if the Tenant ſhall not G

34 H. 6. 13. 26 H. 8. 2. 31 H. 6. 12. 35 H. 6. 39. 21 E. 3 10. Br. Attaint 32.

have

have an Attaint before Execution ſued, or entry made by the demandant or his heir, then perhaps they will not enter untill the Jurors are dead, and then the Tenant ſhall be without remedy by Attaint.

H If a man who was Tenant do recover in Attaint, the Judgement ſhall be that he ſhall be reſtored, *&c.* which could not be if the demandant hath not entred, and when he himſelf is Tenant in poſſeſſion. 4 Aſſ. 2 4 E. 3. 34. *Br.* Attaint 48. *6.* Aſſ. 15. *Br.* 52

I And I think it the better opinion, That if in Treſpaſſe the defendant plead villainage in the plaintiff, *&c.* and he is found frank, unto his damages 20 s. the defendant ſhall not have an Attaint for the ſmalneſſe of the damages, *&c.* But in a *Præcipe quod reddat*, if the Tenant plead *Nontenance*, and it be found againſt him, he ſhall have an Attaint, *&c.*

K An Attaint ſhall be maintainable againſt the Terr-Tenant, without naming him who was party to the Record, Otherwiſe it is in a Writ of *Recordare*, for that ſhall be ſued againſt him who was party, or his heir or Executor, if it be a perſonall action, otherwiſe it ſhall abate. 14 Aſſ. 2. *Br.* Attaint 52. 10 E. 4. 13. 8 *H.* 4. 18. 9 H. 6. 47. 34 *H.* 6. 36. is admitted.

35 H. 6. 30. contr.

L Attaint doth not lye upon falſe verdict given in an Appeal of Maihen, or appeal, of Felony or Murder. 34 H. 6. 36. 35 *H.* 6. 30. the contr. is admitted.

M An Attaint ſhall be ſued in the Common Pleas if the Record be there, or it may be ſued in the Kings Bench upon a falſe verdict given in the Common Pleas if the Record be removed into the Kings Bench. 8 Eliz. Dy. 250.

N A Recovery was in an Aſſiſe brought in the Kings Bench, and afterwards that Record was ſent unto the Common Pleas, and the party ſued an Attaint upon the Record in the Common Pleas, *vide* 8 *E.* 2. *It. Aſſiſe. Item. Kan.* 16 Aſſ. 4. *Br.* Attaint. 60. 44 E. 3. 2. 44 Aſſ. 20. 21 E. 3. 10. *Br.* Att. 32. 21 E. 3. 3. ibid. 51.

Attaint was ſued upon a falſe verdict given againſt the defendant when he claimed Liberty, and adjudged that he ſhould have it. *H.* 15. *H.* 3. *H.* 15. *H.* 3. 21 E. Dy. 364.

O And the Writ of Attaint may be ſued out of the Common Pleas or Kings Bench, upon a falſe verdict given in the ſame Court, as well as out of the Chancery, *qd. vide* 30 *E.* 1. *Itin. Cornub.*

P In a Writ of Entry brought in *Suſſex*, the def. pleaded a Releaſe in *London*, which was found againſt him in *London*, for which he brought an Attaint in *London*, and it was maintainable, *qd. vide M.* 18. *E.* 1.

If the King recover by falſe verdict, he ſhall have Attaint Q.
[108] againſt the *Petit* Jury only; as if the King do recover by Erroneous proceſs, *&c.* the party ſhall have a Writ of Error of the Judgment, and ſhall not name the King, becauſe he is alwaies preſent in Court.

8 H. 4. 4. 15 E. 3. Error 72. 20 E. 3. Error 2. 21 H. 6. 29. The Vouchee or Tenant by Reſceit, or he in the Reverſion where he joyneth to the Tenant by Aide prexe ſhall have Attaint if he loſe by falſe verdict: And if Tenant for life loſe by falſe Judgement, he in the Reverſion ſhall have an Attaint or Writ of Error, living the Tenant for life, by the Statute of 9 *R.* 2. *cap* 3. A

If the Defendant in Treſpaſſe plead villenage in the B Plaintiff, and he ſaith that he is Frank, and is ſo found by Verdict, and afterwards the Defendant dieth, his Heir ſhall have an Attaint to avoid this Eſtoppell and falſe Verdict, although it was given in a perſonall Action.

8 H. 4. 13. *Skren.* In an Attaint upon a Recovery in a *Præcipe quod reddat*, C the Defendant pleads Nontenure, and the Demandant ſaith, That he made a Feoffment unto unknown perſons, *&c.* and that he brought the Action within the year, and with that, that he will averre that the Defendant took the profits the day of the Writ purchaſed; and the Defendant ſaith, That he did not take the profits, *&c* Now this iſſue ſhall be tried by the Attaint; and if they give falſe Oaths, he ſhall have an Attaint upon that Verdict by *Newton*: as if in a Writ of Right the Tenant plead a Collaterall warranty, made within the ſame County, it ſhall be tried by the Grand Aſſize; and if they give falſe Verdict, he ſhall have an Attaint, becauſe the ſame is out of the point of Aſſize by *Newton*, *Tr.* 21. *b.* 6.

21 H. 6. 55. 21 E. 3. 17. Br. Attaint 32. it ſhall be tried by twelve, and not by the Attaint.

19 Aſſ. 11. Br. Attaint 62. 32 Aſſ. 13. Br. Attaint 75. Nonſuit in Attaint after appearance is peremptory, and D he ſhall not have a new Attaint, and ſo upon a *Retraxit*, if the Demandant ſay he will no more ſue his Attaint, and that be entred upon Record, he ſhall not after have another Attaint.

14 Aſſ. 2. Br. Attaint 59. If a man have a *Præcipe quod reddat* againſt divers, by ſe- E veral *Fraeipes*, and by Inqueſt it is found for the Demandant, he ſhall have a Writ of Attaint againſt the Tenants, *&c.* But if it be found againſt the Tenants, he ſhall have ſeveral Attaints, for as unto all of them it is as a ſeveral Inqueſt to try their iſſues ſeverally.

F

F If the Demandant be barred in a Formedon, and afterwards releaſeth all Actions, or all his Right in the Land, yet his Heir ſhall have a Writ of Attaint.

G And ſo if the Father be Nonſuite upon an Attaint upon a Writ of Formedon, the heire ſhall have an Attaint.

H And a man ſhall have an Attaint before Juſtices of Over without original Writ upon a Bill only ſued before the ſame Juſtices, *T. 5. E. 2.*

I If falſe verdict be given in Aſſize of Novel diſſ. then if the Plaintiff will ſue an Attaint, he ought to have ſuch Writ:

The K. to the Sher. of Linc. *greet. If* A *ſhall thee ſecure, then ſum.* &c. *two Knights of the venew of* S, *that they be before our Juſtic. at the firſt Aſſize, when into thoſe parts they ſhall come.* Or thus, *Before our beloved and truſty* R *of* W, *and* B *of* F, *and thoſe whom to them we have aſſociated at certain,* &c. *which the ſame* R *and* B *thee to know ſhall make, ready by Oath to recogn. whether* I *injuſtly and without judgement diſſeiſed the foreſ.* A *of his franktenement in* S, *or of his common of Paſture which belongeth to his franktenement in the ſame Town, after the firſt paſſage of the Lord* H *King, ſon of King* I *into Gaſcoin, whereupon the ſame* A *plaineth that the Furors of Aſſize of Novel diſſ. which betwixt them ſum. was and taken before us at* W, *by our Writ, or before our foreſ.* R *and* B, *or before our beloved and faithfull* W *of* H, *and his Companions our Juſtic. laſt itinerant at* L *in thy Coun. by our Writ, falſe Oath made, and in the mean time diligently inquire of them, who wer the jur. of that Aſſ. and thoſe then have before our foreſ. Juſtic. at the foreſ Aſſ. or before* R *and* B, *and ſum.* &c. *the foreſ.* I: Or thus, *The foreſ.* I. H, *who the foreſ. Tenements now holdeth, that he be there to hear that recogn. and have there the names of the Knights, and this Writ.*

K And if a man loſe by falſe verdict in Aſſize before Juſtices of Aſſize, if he will ſue an Attaint before the ſame Juſtices he ought to ſue a Patent directed unto the ſame Juſtices to give them Authory to hold plea thereof; or he may ſue a Patent unto other Juſtices to hold plea of that Writ of Attaint, and the form of the Patent is ſuch:

L *The K. to his beloved and faithfull* R *of* B *greet. Know ye that we have conſtituted you,* &c. *our Juſtices, together with theſe*

whom to you we have aſſociated the Jury of xxiiij *Knights to take, which* A *arraign before you by our Writ againſt* L *to make convict the Jurors in the Aſſ. of novel diſſeiſin which betwixt them ſum was, and taken before you at* W *by our Writ of the ten. in* S. *or of common of paſture in* S: Or thus, *Before you the foreſ.* R, *and our beloved and faithfull* S *lately our Juſtic.* &c. *at* W *by our Writ of the tenants in* S, *and therefore yo we command, that at certain,* &c. *ye ſhall appoint, that Jury you take, to do thereupon what to Juſtic. belongeth, accord. to Law and Cuſtom of our Realm, ſaving to us our amerecements thence coming, we command our Sher. of* Linc. *that at certain day and place which him to know cauſe ye, that Jury before you to come be cauſe. In teſtimony of which we have cauſed theſe Letters to be made Patents. Witneſs.*

And a man ſhall have a Writ of Attaint upon a falſe M Verdict in an Aſſiſe of Nuſance. *Why he did levy or proſtrate a certain Pool in* N, &c. *or a certain Ditch, or a certain Hedge, or diverted the courſe of a water in* N, *to the Nuſance,* &c. *in the ſame Town.* And the form of the Writ is ſuch:

If A, &c. *then ſum.* &c. *ready by Oath to recogn. whether* [109] I *injuſtly, and without judgement hath levied or proſtrated a certain pool in* N, *or a certain ditch, or a certain hedge, or diverted the courſe of a certain water in* N, *or ſtreitned, or choked up a certain way in* N *to the Nuſance,* &c. *in the ſame Town, after the firſt,* &c. *whereof the ſame* A *plaineth, that the Jurors of the Aſſ. which betwixt them was ſum. and taken before,* &c. *at* N, *by our Writ falſe Oath made,* &c. *and in the mean time,* &c. *and ſum.* &c. *and have* &c.

And it is a Rule in the Regiſter, That in an Attaint up- A on an Aſſiſe of Novel diſſ. a certain day ſhall be ſet, as in an Aſſiſe, *Die Lunæ, vel alio die in craſtin. vel in Octav. vel in quind. Paſch.* but it behoveth that the Tenant have Garniſh out by 15 dayes in the Attaint, for the Statute doth not give leſſer time, but only in Aſſiſe before the King.

And there is another form of the Writ, if the Aſſiſe be B adorned into the Common Pleas, and taken there before the Juſtices of the Common Pleas, and the ſame appeareth in the Regiſter.

11 H. 4. 52. And another form is of the Writ of Attaint, where the As- C ſiſe is brought againſt the husband and wife, and the wife is received

received for the default of the husband, and pleadeth and loseth by false verdict.

D And another form of Attaint is, where the Tenant in the Assise pleadeth the Release of the Plaintiff, or of his ancestor in barre of the assise which is found against them, upon a false verdict.

E And another form of the Writ of Attaint, where the Verdict passeth by *Nisi prius* out of the Common Pleas.

F And another form of the Writ of Attaint is, where the assise is summon. before certain Justices, and after it is taken before other Justices by a general Commission, and a false verdict is given upon the same.

G And another form of the Writ is, If an assise be summon'd before divers Justices, and afterwards is taken by any of them by vertue of the Writ of *Si non omnes*, then the Party shall have a Writ of Attaint, rehearsing the whole matter.

H And if a man upon verdict given in an assise before the Justices of assise sueth an Attaint before the same Justices, or other Justices, he may have a Writ of association directed unto the same Justices before whom the attaint is sued, and the Writ of *Si non omnes*, as he shall have in assise, *&c.* who was Plaintiff there: and he shall have a Writ Patent directed unto him who is associate, *&c.* which Writs do appear in the Register after the Writ of assise of Novel disseisin.

But it appeareth by one Writ in the Register, That there was a Constitution made, which required, That the assise and Jurors and Certificate shall be taken before the Justices commonly assigned: By which it seemeth, That a man shall not have an attaint upon a false verdict given in an assise, but before the Justices of assise, or before the Justices of the Common Pleas if the Record be removed thither, or before the Justices of the Kings Bench, if the Record be removed before the King; and the form of the Writ is such:

21 E. 3. 3. *Br.* Attaint 21. 21 Ass. 7. *Br.* Certificat *de Assis.* 8. 21 E. 3. 10. *Br.* Attain 32 8 H. 6. 2. No Attaint upon *Tenorem recordi*, but upon the Record it self.

The K. to his belov. and trusty F *and* G *of* E *greet. Although lately we constituted you our Justic. the Jury of twenty and four Knights to take, whi.h* L, *which was the wife of* E *arraign. before you by our Writ, against* E *which was the wife of* A *of* L, *to make convict the Jurors of the Ass. of nov. diss. which betwixt*

him A *and the foref.* L *and other*, &c. *fum. was and taken at* L *before our belov. and truſty* R *and* B *lately our Juſtic. at that Aſſ.* &c. *aſſign. by our Writ of the ten. in* S, *yet becauſe the conſtitution foref. made was, againſt the form of our Statute at* Northampton *lately ſet forth, in which is conteined that Aſſizes, Juries and Certificates before our Juſtic. communcly aſſign. and no others be taken, which Statute in all and ſingular its Articles, willing inviolably to be obſerved, we command you, that of the taking of the Jury foref. by pretence of our Commiſſ. ſo made, you in no wiſe intermeddle; Witneſs*, &c. which Stat. was made *An.* 2. *E.* 3. *cap.* 2.

By which it appeareth, That he ſhall not have a Writ of Attaint by Commiſſion &c. before other Juſtices, but only before juſtices of aſſiſe, or of the Common Pleas or Kings Bench, as before is ſaid.

The form of the Writ of Attaint upon a Reddiſſ. is I ſuch:

The K. &c. *If* R *ſhall*, &c. *then ſum.* &c. 24 *legal Knights*, &c. *to be there, ready*, &c. *Whether the Jurors by which a certain inqueſt was taken before* E, *then Sher. of thy Coun. and Keep. of the Pleas of our Crown of our ſame Coun. by our Writ at* W *betwixt* R *and the foref.* B, *of a certain reddiſſ. to the ſame* R *by the foref.* B *done, as is ſaid of one meſſuage, and nine acres of Land of the apport. in* W. *falſe Oath made, as the ſaid* R *to us grievouſly complaining hath ſhown, and in the mean time diligently inquire thou, who were the Jurors of that inqueſt*, &c. *and thoſe then have before the foref.* R *and* L *and ſum. the foref.* B *that he be there to hear that recogn. and have there the ſum.* &c.

vid. 8 Eliz. Dy. 25. And it ſeemeth, That this Writ of attaint ought to be ſued before the Juſtices of aſſiſe of the ſaid County, and that they ſhall have a Patent for the ſame directed unto them, and that the Record ſhall be brought before them: But if the Record be removed into the Common Pleas, then it ſeemeth he ſhall have his Attaint there.

And it appeareth by *Glanville*, That a man ſhall have K an Attaint; and the manner how the Jurors ſhall be puniſhed.

42 E. 3. 26. 8 H. 4. 23. by *Gaſcoigne.* And if any Jurors be convict of falſe Oath, they ſhall I. be impriſoned, and then they ought to ſue unto the King to pay a fine for their impriſonment, and when they are agreed with the King they may ſue a Writ for to remove the Record

cord before the King in the Kings Bench, and the Writ shall be such:

By this appeareth that they shall not forfeit their Lands in fee, as upon a Premunire, but for their own lives, by St. Attaint. 100. & 95. upon the book of 22 E. 4. 1.

The King to his beloved E, *and his companions*, &c. *greet. Whereas* W of M, *and other of false oath by them made in a certain inquest taken at* W of B, *and his companions lately our Justic.* &c. *of the Bench by our Writ betwixt* R. *Demandant, and* W of M, *tenant of the manor of* B *with the appurt. except one garden in the same mannor, before our beloved and trusty* W of B *and his companions*, &c. *of the Bench by a certain Jury of* 24 *convict were, and on that occasion to our Prison of the Fleet adjudg. and their goods and chattels, lands and tenements into our hands seised, we the record and process of the business foresaid with all things those touching, together with the bodies of the foresaid* W, *and the others, before us for certain causes to come we have caused and now of the part of him* W, *we are supplicated, that whereas he in such prison by occasion of the Premisses along time detained hath been, and yet is, that we will from him a reasonable fine for his imprisonment, his goods and chattels, lands and tenements foresaid. as also for the estrepment of the lands and tenements receive, him from the prison in which he is detained to cause to be delivered: we his estate compassionating in this part, and willing to the same grace special to do, command you that having viewed the record and proces foresaid. and consideration had to the value of the goods and chattels, lands and tenements foresaid. and of the estrepment of the same, reasonable fine of the same* W *for the which to us belongeth in this part ye receive, and him from the prison in which on the premised occasion he is detained, to be delivered, and to him his goods and chattels, lands and tenements in our hand being so to be delivered cause ye by the fine foresaid. Witnesse*, &c. [110]

And thereupon the party shall be fined, as the Justices of the Kings Bench will assesse in their discretion; and upon that they shall grant a Writ to deliver his goods and his Lands, and for to deliver him out of prison, and the Writ shall be such: 42 E. 3. 26. See Stam. 23 H. 8. cap. 15.

The K. to the Sher. &c. *Whereas* W of M *one of our Justic. in a certain inquest taken at* W, *before* W of B, *and his companions our Justic.* &c. *as above, to there, our Justic. of the Bench by*

our Writ of falſe oath by him W *made, by a Jury of* xxiiij. *Knights convict was, and on that occaſion to our priſon adjudg. his goods and chattels, as alſo his Lands and tenements into our hands ſeiſed are, is manifeſt to us, by inſpection of the Record, and proceſs foref. which before us to come we have cauſed, and the ſame* W *after he came into our Court before us, and fine made with us for the impriſonment foref. and his lands and tenements to have; There we command that all the lands and tenements of him* W, *if on that occaſion and no other in our hand they be, to the ſame* W, *without delay thou to have back cauſe, and from the body of him* W *taking on the occaſion foref. altogether thou ſuperſede. Provided notwithſtanding that of the value of the lands and tenements foref. from the time of the judgement upon the verdict of the Jur. foref. given to the date of this Writ, and alſo of the eſtrepment of the ſame, when thereupon it ſhall be inquired, us thou anſwer: Witneſs* W *Thorpe*, &c. *An. 6. Rot.* 104.

And there are divers other manner of forms of Writs of Attaint, which are not here mentioned, becauſe a man may ſee them in the Regiſter. A

Writ de Audiendo & Terminando.

THis Writ of Oyer and Terminer ſhould not be properly called a Writ; But it is a Commiſſion directed unto certain perſons, when a great aſſembly, inſurrection or a heinous miſdemeanor or Treſpaſs is committed and done in any place. Then the manner and uſage is to make ſuch a Commiſſion of Oyer and Terminer, or hear and determine ſuch misbehaviour; and the Statute made 2 *E.* 3. *cap.* 2. requireth, That no Commiſſion *de Oyer* and *Terminer* be granted but before the Juſtices of our Bench or other, or the Juſtices Itinerants, and that for horrible Treſpaſſes; and it is of the Kings ſpecial grace, according unto the form of the Statute thereof made in the time of the Grandfather of the ſaid King *Edward*; and the form of the Commiſſion is ſuch: B

The King to his belov. and truſty A, B *and* C, *greet. of the grievous plaint of* D *we have received that* E, F *and* G, *and certain other malefactors of our peace perturbers, upon him* D *at* N, *with force and arms aſſault made and him beat*, &c. *ſo that his life was deſpaired, and other things enormous to him did to the grievous damage of him* D, *and againſt our peace, and be-* C

cauſe

cauſe the treſp. if it were otherwiſe done leave we will not unpuniſhed, we aſſign you, and two of you our Juſtices to enquire by the oath of honeſt and legal men of our Coun. of Lincoln, *by whom the truth of the matter better known may be, of the names of the malefact. foreſ. who together with the foreſ.* E, F *and* G, *that treſp. did, and of that treſp. more fully the truth, and the ſame treſp. to hear and determ. accord. to Law and Cuſt. of our Realm; and therefore you we command, that at certain daies and places, which you or two of you to this ſhall appoint, that inqueſt ye make, and that treſp. ye determine in the form foreſ. done: as to juſtice belong. accord. to Law and Cuſt. of our Realm, ſaving to us the amerciements and other things to us thence belong. For we command our Sher foreſ. that at certain daies and places which you or two of you to be known ſhall cauſe, that to command he cauſe before you, or two of you ſo many and ſuch honeſt and legal men of his Bailiwick, by whom the truth of the matter in the premiſſes better known may be, and enquired in,* &c. *Of which,* &c.

And the rule in the Regiſter is, That if this clauſe, *And certain other malefactors,* &c. be not put into the Commiſſion aforeſaid, there in the end ſhall be this clauſe, *By whom the truth of the matter better known may be of the treſp. foreſ. the truth of the ſame treſp* &c. And the form of the Writ which ſhall be directed unto the Sheriff upon that Commiſſion is ſuch: [111]

A

The K. to the Sher. &c. *of the grievous plaint of* D, &c. *and ſo forth, to we have aſſigned our belov.* &c. A, B *and* C, *and two of them our Juſtices to enquire by oath of honeſt and legal men,* &c. *(to there,)* &c. *to hear and determine accord. to Law and Cuſtom of our Realm,* &c. *and therefore thee we command that at certain daies and places which the ſame* A, B *and* C, *to thee known ſhall make, to come thou cauſe before them or two of them ſo many and ſuch honeſt and legal men of thy Bailiwick by whom the truth of the matter in the Premiſſes better known may be and enquired; And have there this Writ,* &c.

B And the King may make a Writ of Aſſociation unto the Juſtices of Oyer and Terminer to admit them into their Company whom the King hath aſſociated unto them, and the form is ſuch:

The K. to his belov. A, B *and* C. *Know ye that whereas lately at the plaint of* D *to we ſuggeſt. that* E, F *and* G, *and other male-*

malefactors, and of our peace diſturbers, &c. unto, &c. unpuniſhed, we have aſſigned you and two of you our Juſtic. &c. unto, To hear and determine accord. to Law and Cuſtom, &c. we have aſſign. to you or two of you our belov. and truſty H. *the premiſſes with you, or two of you to do yet ſo that if at certain daies and places, which you or two of you to this ſhall appoint, him* H *to be preſent it ſhall happen, then him to this for a companion admit ye, in the form foreſ. For we command the ſame* H, *that together with you, or two of you to this he intendeth, as foreſ. is. Witneſſe, &c.*

And the form of the Writ of Aſſociation, which ſhall be directed unto him who ſhall be aſſociate unto the Commiſſioners is ſuch:

The K. to his beloved and truſty H, *greet. Know, That whereas lately at the plaint of* D *to us ſuggeſting that* E. F *and* G, *and certain other malefactors, &c. we have aſſign. our beloved, &c. A, B and C, and two of them our Juſtic. to enquire (as in the Patent) unto, Determine accord. to Law, &c. we have aſſociated you to the foreſ.* A, B *and* C, *and to two of them, the Premiſſes together with them, or two of them to doe, yet ſo that if at certain daies and places, which the ſame* A, B *and* C, *or two of them to this ſhall appoint, you to be preſent it ſhall happen, then you to this for a companion let them admit, otherwiſe* A, B *and* C, *or two of them your preſence not expected, to do the Premiſſes may proceed; and therefore we command you, that to the premiſſes together with the foreſ.* A, B *and* C, *or two of them ye intend in the form foreſ to do, &c. ſaving to us, &c. For we command the ſame* A, B *and* C, *that you to this for a companion they admit as foreſ. is.*

And then the King may ſend another Writ unto the ſaid Juſtices of Oyer and Terminer to proceed, although that all the Juſtices do not come at the day of the Seſſions. And this Writ is called a Writ of *Si non omnes*, &c. and ſhall be directed as well unto that Juſtice, as ſhall be ſo aſſociate, as unto the other Juſtices of Oyer and Terminer, and ſhall be ſuch:

The K. to his belov. A, B, C *and* H, *greet. Whereas lately at the plaint of* D *to us ſuggeſting that* E, F *and* G, *and certain other malefactors, &c. unto Againſt our peace. We have aſſigned you the foreſ.* A, B *and* C, *and two of you our Juſtic &c. unto, To hear and determine accord. to Law an Cuſtom of our Realm, and after we have aſſociated to you the foreſ.* A, B *and* C,

and

and to two of you the foresᵗ. H the premisses to do; we command you that if you all the premiss to do commodiously connot be present, then you or three, or two of you whom present to be it shall happen, the premisses to do accord. to Law, &c. *may proceed,* &c. *Witnesse,* &c.

D And if the King make Commissioners of Oyer and Terminer *A*, *B* and *C*, and afterwards by another Writ doth associate unto them *I de H*, who is admitted, *&c.* and afterwards *I de H* dieth. The King may make a new association of other persons to the first Justices; so that association shall be made and granted after association; and he may make association of two or three persons unto the first Commissioners, or to those of them who are living to continue the proceedings, and to proceed to hear and determine the whole matter, and that they do admit those he doth associate, or two or any of them to proceed upon the whole matter, and such Writ is in the Register: and by that it appeareth, That by the death of any of the Commissioners, the matter shall not be discontinued: and the Writ of association shall be Patent, and the Writ directed to the Justices of Oyer and Terminer to admit the others in their Society shall be close.

E And if a Trespasse be done unto one in the confines of two Counties, then the party may sue a Commission of Oyer and Terminer directed to certain persons, to hear and determine the matter, and the form shall be such:

The K. to his belov of the grievous plaint of D, *we have received that* G *the Goods and Chattels of him* D *to the value of one hund. pounds, at* M. R *and* N, *which are in the confines of* Norf. *and* Suff. *found, with force and arms took and carried away,* &c. *to this, Our Justic. to enquire by the oath of honest and legal men of the Coun foresᵈ by whom,* &c. *For we command our Sher. of the Coun. foresᵈ that at certain daies and places in the confine of the Coun. foresᵈ which,* &c. *before them in the confine of the same Coun. so many and such honest and legal men,* &c.

And the Writ directed unto the Sheriffs of two Counties [112]
shall be close.

A And a Commission of *Oyer* and *Terminer* was granted upon a Rescous made unto the Kings Baily, where he distreyned for debts or amercements to the King, and Rescous was made unto him.

B And the King may grant certain Commissions *de Oyer & terminer*, divers Trespasses done by any person at the suggestion

geſtion of divers perſons without nominating any in the Commiſſion, and then the form of the Commiſſion begineth in this manner.

The K. to his Beloved. &c. *of the clamourous plaints of divers men of the Coun. of* N *often coming to our hearing, that* A *Biſhop of* Winch. &c. *many and divers oppreſſions,* &c. And he ſhall have the like Writ unto the Sheriff to return the panell.

And if a man have goods and merchandiſe in any Ship upon the Seas, which Ship is broken by tempeſt, and the goods caſt upon the Land, which are not wrecks, becauſe certain perſons came alive to the Land, and the merchandiſes or goods are taken by malefactors unknown, *&c.* The party may have a Commiſſion of *Oyer and Terminer*, directed unto certain perſons to enquire of thoſe who did the Treſpaſſe, and to hear and determine the ſame, and to make reſtitution unto the party, and a Writ unto the Sheriff to return *probos & legales homines,* &c. before the ſaid Juſtices, *&c.* C

And a man may have Commiſſion of *Oyer and Terminer*, to enquire of Extortions, Oppreſſions, and other miſdemeanours of under-Sheriffs, Eſcheators, Bayliffs, Clarks of the Market, and all other Officers, upon the complaint and ſuit of any one that will ſue, and a Writ unto the Sheriff to return a Jury before the ſaid Juſtices. D

And alſo the King may direct his Writ unto the Sheriff, or unto Majors or Baylies, to do as much as in them lyeth and appertaineth to them, to remove ſuch perſons from their Office, againſt whom it is ſuppoſed that any one will complain; Or that he do not put ſuch or ſuch into any Office, untill enquiry be made of their carriage and behaviour, *&c.* E

And if a man ſueth a Commiſſion of *Oyer and Terminer*, againſt divers perſons for taking of his goods and Chattels, and when they have taken them, they waſt, ſpend or oſſoyn them; Then the party who ſued out the Commiſſion ſhall have a Writ unto the Sheriff reciting the matter, commanding him to ſtay the goods and to put them into ſafe cuſtody, untill it be otherwiſe provided and adjudged by the Juſtices of Oyer and Terminer, or by other Juſtices to be after aſſigned. And upon that Commiſſion of Oyer and Terminer, F

miner, if it be found for the plaintiff, the Juſtices may return the goods to the party, and give him damages, and therefore it varieth from the Action of Treſpaſs ſued before the Juſtices of the Kings Bench, or the Common Pleas.

G And in the time of the vacation of a Biſhoprick, if any perſons hunt in the Parks or Chaſes of the Biſhop, the King may ſend his Commiſſion of Oyer and Terminer to certain perſons, to hear and determin and enquire thereof; and the Writ ſhall be ſuch:

The K. to his Belov. &c. Know ye that we have aſſign. you, and two of you our Juſtices to enquire, &c. of the Coun. &c. by whom &c. what malefactors, and of our peace perturbers, the Parks of S, H and C, in our Coun. foreſ. after they to our hands by reaſon of the inſtant vacation of the Biſhoprick of Chicheſt. *came, by force and arms broke, and in them without our licence and will chaſed, and beaſts took and carried away, and other things enormous to us there did to our loſſe and contempt, and againſt our peace; and of that treſp. foreſ more fully the truth, and thoſe tranſgreſſions to hear and determin, accord. to Law, &c. and therefore you we command, that at certain dayes, &c. that inqueſt you make, and that treſp. determin in the form foreſ. to do, &c. we command, &c. and to be enquired, &c. Witneſſe, &c.*

H And if in the time of the vacancy of the Arch-Biſhoprick, any perſon doth hunt in the Parks, or cut down the woods, or fiſh in the Piſcaries of the Biſhop, *&c.* when the Arch-Biſhop is created, the King may ſend and grant Commiſſion of Oyer and Terminer, to enquire and determin the Treſpaſs in the time of the vacancy; and the form of the Commiſſion ſhall be,

The K. to his Beloved, &c. of the plaint of the venerable Father W. Arch-biſhop we have received that certain malefactors, &c. Parks, &c. and recite in the Commiſſion all the Treſpaſs ſpecially; *and other things enormous, &c. to our contempt manifeſt, and deteriorat. of the Arch-biſhopr. foreſ. and grievous damage of the ſaid Arch-biſh. and againſt our peace; and becauſe the contempt and treſp. &c. unpuniſhed, &c. aſſigned we have, &c. to there, the contempt, and thoſe treſpaſ. as well at our ſuit as of the foreſ. Arch-biſh. to hear and determin accord. to Law, &c. and therefore to you, &c.*

But it is to ſee how it ſtandeth with the Statute of *Marlebridge,*

bridge, that the Biſhop ſhall have an Action and puniſh a Treſpaſs done in the vacancy of the Biſhoprick: but it ſeemeth it ſhall be ſo by theſe words in the Statute; *That if any rapines be done to Abbots, or other Prelates Eccleſiaſtic.* And in the end of the Statute are theſe words; *But if in the Lands and Tenements of ſuch religious perſons, of which their Prelates died ſeiſed, as of the right of their Church, any men intrude themſelves in time of vacancy*, &c. And it ſeemeth theſe words, *bujuſmodi religioſorum*, ſhall extend to Biſhops: as much as to ſay, the Biſhop ſhall puniſh a Treſpaſs [113] done in time of vacation of the Biſhoprick, in cutting down of Trees, *&c.* for of right the King cannot cut ſuch trees; but for hunting in the Parks, or fiſhing in the Piſcaries; it ſeemeth the King ought to have the Action for the Treſpaſs done in the time of the vacancy; But if they do deſtroy all the fiſh within the fiſhpools, or kill up all the Deer in the Parks in the time of the vacancy, it ſeemeth reaſonable, that by the Statute of *Marlebridge*, the ſucceſſor have an Action for ſuch Treſpaſs: *Quare* of this matter.

And it is intended, That the King of right ought to keep A and defend his Kingdom, as well againſt the Sea, as againſt enemies, that it be not drowned or waſted, and to provide remedy for the ſame: And alſo to provide that his ſubjects by all wayes through the Kingdom paſs with ſafety; and therefore if the Sea walls be broken, or the Sewers or gutters not ſcowred, ſo as the freſh waters cannot have their courſes, the King ought to grant a Commiſſion to enquire thereof, and to hear and determ in the defaults; and the form of the Commiſſion is ſuch:

The K. to the beloved A, B *and* C, *Whereas the walls ditches, gutters, ſcwers, bridges, cawſies, gorſes and trenches, in the parts of* Holland, *betwixt the croſſe of* W *and the bridge of* E, *by violence of the ſea, and reflux, and inundations of ſweet waters, by divers places in the parts foreſ. ſo thrown down are and broken, that many damages and ineſtimable for default of reparation of the ſame walls, ditches, gutters, ſewers, bridges, cawſies and gorſes, and obſtruction of the trenches foreſ. the times paſt have happened there, and more by proceſs of time to happen are feared, unleſſe hereupon ſpeedy remedy opportune be applied: We, for that by reaſon our dignity royal to provide for the ſafety of our Realm every where we*

are

are bound, willing in this part congruous and ſpeedy remedy to be applied, have aſſigned you, &c. to overſee the walls, ditches, gutters, ſewers, bridges, cawſies, gorſes and trenches foreſ. and to enquire by oath, as well of Knights, as of other honeſt and legal men, of the parts foreſ. as well within the liberties as without, by whom, &c. may be, by default of which ſuch damages happened there, and who lands and tenements hold, or commmon of paſture, or of piſcary in thoſe parts, or elſe defence, commodity and ſafeguard have, or howſoever, by the walls, ditches, gutters, ſewers, bridges, cawſies, gorſes foreſ. have may, as alſo damages by the trenches foreſ. ſuſtain, or ſuſtain may, and all them for the quantity of their lands and tenements, or by the number of acres, or by carves for the ratable portion of his tenure, or for the quantity of common of paſture or of piſcary there to be diſtrained, and for amercement, and other manner, as better ye ſhall ſee to be done, to be puniſh. together with the Bailies of libert. and others of thoſe parts to ſuch walls, ditches, gutters, ſewers, bridges, cawſies and gorſes, in places neceſſary repairing, and as often as, and where it ſhall be neceſſary anew to be made, and the trenches foreſ. in places neceſſary to be ſtopped up, ſo that any tenants ſuch like land or tenements, or common of paſture, or of piſcary having, rich or poor, or of what other condition ſoever, eſtate or dignity, who defence may have in any manner by the foreſ. walls, ditches, gutters, ſewers, bridges, cawſies, and gorſes or damages by the trenches foreſ. ſuſtain, or may ſuſtain, whether they be within the libert. or without, be not ſpared in this part, and therefore you we command, that at certain daies and places, which you, &c. to this ſhall appoint, the foreſ. walls, ditches, gutters, ſewers, bridges, cawſies, gorſes and trenches, you overſee, and all the premiſſes, and ſingular, you do and fulfill in form foreſ. and all things which by you to be ordained and done ſhall happen in this part, as well within the libert. as without, ye cauſe firmly to be obſerved; For we command our Sher. of Linc. &c. that to come he cauſe, &c. ſo many and ſuch as well Knights as others honeſt, &c. as well within the libert. as without, by whom the truth of the matter better known may be, &c.

B And upon this Commiſſion a Writ ſhall iſſue to the Sheriff rehearſing the whole matter in the Commiſſion, commanding him to return a Jury, *&c.* as appeareth by the Com-

Commiſſion. And if the Juſtices ſhall ſit by vertue of their Commiſſion, and take divers preſentments and indictments, and award proceſs upon them returnable at a certain day, and afterwards all the Juſtices or ſome of them dye, the King may grant a new Commiſſion to the Juſtices which are living only, or unto others, rehearſing the death of him who is dead, or of thoſe who are dead, commanding them to continue the proceedings begun, and to proceed upon that proceſs, and to hear and determine all theſe defaults and offences in the ſaid Commiſſion, the King reciting, that he hath ſent unto the Executors of thoſe who died, to ſend all the Rols and Records and proceſs before the new Commiſſioners. And upon that Commiſſion, the King ſhall ſend a Writ unto the Executors of the Juſtices who are dead, to ſend the Rols, Records and proceſs as aforeſaid, forthwith under their ſeals, and another Writ unto the Sheriff to make a pannel, and to return the ſame before the new Commiſſioners, and upon that Commiſſion the Juſtices ſhall make a precept unto the Sheriff, that at a certain day and place he return before them
[114] the pannell according to their Commiſſion, and that he be there before at the ſame day with the precept. And this new Commiſſion ſhall be made as well to continue the ſuits and proceſs betwixt party and party ſued before the Juſtices of *Oyer & terminer*, as well as the indictments and preſentments made and found for the King. And the King may put into the Commiſſion a command unto the ſaid Commiſſioners, to receive the Records and the Rols, and proceſſe of the ſaid Executors. But ſee the Statute of Sewers, and eſpecially the Statute of King *Hen.* the 8th for that matter.

And if any Engliſh Merchants goods be ſpoyled, and his A goods taken beyond the ſeas by Merchants ſtrangers, and B the Engliſh Merchant was beyond ſea to have juſtice and reſtitution made thereof and could not obtain the ſame, and this matter is teſtified unto the King in his Chancery. Now upon this Teſtimony, if the Merchants ſtrangers ſhall come into any place within the Realm of *Engl'and* with their goods, then the Engliſh Merchant ſhall have a Writ out of the Chancery directed unto the Major or Bailies where ſuch Merchants ſtrangers are with their goods, to arreſt them, and their goods, and to keep them under arreſt untill they

have

have ſatisfied the party his damages, which he hath ſuſtained by reaſon of their miſdoing. And may have divers Writs directed unto divers Ports or Towns unto the Major or Baylies thereof to arreſt ſuch Merchants and their goods, and to detain them untill they have ſatisfied the Engliſh Merchant for the Treſpaſs which they have done unto him beyond the Seas. But it ſeemeth the Engliſh Merchant ſhall not have ſuch Writ for any debt due to him by contract from a Merchant ſtranger upon a contract made beyond the ſeas, if the Merchant do come in to *England*, or his goods; *Quære tamen* thereof. And the King ſhall recite in his Writ which is directed unto the Major or Bailies, *&c.* how he hath ſent the like Writ unto the Major or Bailies of ſuch a Town, and another Writ unto the Major and Bailies of the other Town, in the like manner; And this Writ ſhall be ſued to attach all thoſe who did the Treſpaſs, and their goods unto the value of the Treſpaſs, which he ſuppoſeth he was endamaged.

C And if certain perſons ought to accompt unto a Corporation, as if the King grant to the honeſt men of the Town of *N.* a certain ſumme, out of things which come to the ſame Town to be ſold, and there are Collectors to gather the ſame, who do ſo; The King may grant a Commiſſion to certain perſons, to enquire what perſons have received ſuch ſummes, and to hear and determine the matter, and to hear their accounts thereupon, and to do in that caſe as Auditors ſhall do, and he ſhall ſend a Writ unto the Sheriff to return a Jury before the ſame Juſtices at the day, *&c.* which they appoint, *&c.* to enquire thereof, and the Commiſſion is in the end of the Writs *Ex parte talis*, and before the Writs of Dett. in Regiſter.

18 E. 4. 1. Conſpiracy againſt two, one dieth, pendente the *Writ*, *per curiam* the *Writ* ſhall not abate, and note that Finch. de 44 E. 3. 22. that one ſhall anſwer if he appear.

Writ of Conſpiracy.

vid. Statute 33 E. 1. *de Conſpiratoribus.* *vid.* after E. F. G. Conſpiracy ſhall be againſt one, & *è contr.*

A Writ of Conſpiracy lieth where two, three or more perſons of malice and covin do conſpire and deviſe to indict any perſon falſly, and afterwards he who is ſo indicted is acquitted, now he ſhall have this Writ of Conſpiracy againſt them who ſo indicted him. But this Writ lieth againſt two perſons at the leaſt who ſo do conſpire, for if one perſon of malice and falſe imagination do labour, and cauſe another falſly to be indicted, the party who is indicted ſhall not have a Writ of Conſpiracy, *&c.* but an Action upon the Caſe againſt him who ſo cauſed him falſly to be indicted. D

Note if the Action be brought againſt divers, and all but one are acquit, the Action faileth. 28 *Aſſ.* 12. ſo if all but one are diſcharged by matter in Law.

34 H. 6. 9. *per Priſot.* Note, this caſe proves that Conſpiracy lieth as well upon appeal as indictment, for he is arraigned upon the appeal. *Stamford* 172. That is indented at the ſuit of the King.

If two men conſpire to indict another, and afterwards he is indicted, for which he bringeth appeal upon the ſame indictment, and after is nonſuit upon his appeal after declaration or before declaration, the party who was falſly indicted ſhall have a Writ of Conſpiracy, becauſe he is arraigned after the declaration upon the Appeal, and is acquitted, and before the declaration upon nonſuit he ſhall be arraigned upon the indictment, and if he be acquit, he ſhall have a Writ of Conſpiracy, *&c.* But if he be falſly indicted, and after an appeale is ſued upon that indictment, and he put to anſwer unto the appeal, and afterwards is acquitted by verdict upon the appeal, he ſhall not have a Writ of Conſpiracy in that Caſe, becauſe he is acquit upon the appeal, and not upon the indictment, *&c.* But upon nonſuit in the appeal a Conſpiracy doth lye for the cauſe before mentioned. E

19 E. 3. Fitz. Conſpiracy 12. 5 E. 3. lib. 22.

And if two conſpire to cauſe a man to ſue an appeal againſt another of felony or murder without any indictment taken or found thereof, and after the def. is acquit by verdict, he ſhall not have a Writ of Conſpiracy againſt thoſe who compired to appeal him, becauſe that by the Statute of *Weſt.* 2. *cap.* 12. *Becauſe many by malice*, it ſhall be enquired of the abettors, if he be not indicted thereof; and if they F

they be found, he ſhall have a *Scire facias* againſt them out of the ſame Court where he is acquitted, to anſwer him his damages. And ſo if he be nonſuit in any ſuch appeal, where there is not any indictment, the def. ſhall have a Writ of Conſpiracy after the nonſuit or after the acquitall: But the form of the Writ of Conſpiracy where he is acquit by verdict, doth vary in words in the end from the Writ of Conſpiracy which is founded upon the plaintiffs nonſuit in appeal; for one Writ founded upon the verdict is, *untill accord. to Law*, &c. *acquitted was*. And the other Writ of Conſpiracy founded upon the nonſuit is, *Untill the ſame plaint. by conſiderat. of our Court thereupon quit went*. The form of which Writs follow:

5 E. 3. Conſpiracy 22. 13 E. 3. Conſpiracy 25. the auditors ſhall not be enquired of but where the abetment is found by enqueſt. [115] 19 H. 6. 19. & 4 H. 6. 23. nul tiel record is a good reply in conſpiracy. 22 Aſſ. 77.

The K. to the Shcr. &c. *If A. ſhall*, &c. *then put*, &c. B. *and C. that they be before us*, &c. *to ſhew, why Conſpiracy betwixt them at N. before had, the foreſ. A. of a certain beaſt theeviſhly at N. taken and led away to be indicted, and him on that occaſion to be taken, and in our priſon of War. untill in the ſame Court before our beloved and truſty R. and S. our Juſtic. of our Gaole at War. to deliver aſſign. accord. to Law and cuſtom of our Realm acquitted he was, to be detained falſly and maliciouſly procured, to the grievous damage of him A. and againſt the form of the ordin. in ſuch caſe provided, and have there the names of the pledg. and this Writ. Witneſs*, &c.

The other Writ founded upon Nonſuit in Appeal is ſuch:

If A. ſhall, &c. *then put*, &c. B. *and C. that they be before us*, &c. *to ſhow why conſpir. betwixt them at N. forehad, the foreſ. A. of the death of D. at E. lately ſlain to be appealed, and him A. on that occaſion to be taken and in our priſon of L. untill in our Court before us the ſame A*, &c. *by conſideration of our Court thereupon quit went*, &c.

A And if a man cauſe one as principall to be appealed of felony or murder, and another as acceſſary to him, and afterwards is nonſuit in his appeal, the acceſſary ſhall have a Writ of Conſpiracy as well as the principall.

And if the principall and one as acceſſary be indicted of felony, and be taken and arreſted, and the principall is indicted and acquitted, now by that the acceſſary is diſcharged, and the acceſſary thereupon ſhall have a Writ of Conſpiracy againſt thoſe who conſpired to indict him, and the Writ in the end ſhall ſay *Quouſque idem* (the principal) ſecundum

33 H. 6. 1. 34 H. 6. 9. cont. if the principal dy before he be attainted.

ſecundum legem, &c. *acquietatus fuiſſet, & idem* (the acceſſary) *quietus recceſſit.*

And a man ſhall have a Writ of Conſpiracy upon an en- B
dictment before any Major, Baily of any City or Borrough who have Goal delivery with the City or Borrough if he be acquitted before them *&c.* for that acquittall diſchargeth him
20 H. 6. 3. of the felony. But a Writ of Conſpiracy doth not lye againſt C
the indictors themſelves.

7H.4.31.8H 4.6. 21 E. 3. 20 47 E. 3. 17. 27 *H.* 8. 2. 20 *H.* 6. 5. & 33 If Jurors be ſworn to enquire, *&c.* and afterwards any of D
them is diſcharged by the Juſtices, he ſhall not be puniſhed for what he did when he was ſworn: But if he do conſpire after, he may be charged for the ſame in a Writ of Conſpiracy.

33 H. 6. 14 & 19. 14H 6. Conſpiracy 1. And he who cometh into Court and diſcovereth felonies, E
and is ſworn to give evidence to the Jury, is not chargeable in Conſpiracy.

In a Conſpiracy againſt two, one pleadeth to the Writ, and the other matter in law, which is adjudged for him, and the plea unto the Writ found by verdict againſt him who pleaded unto the Writ, the plaintiff ſhall have judgement againſt him who pleaded to the Writ: But if both had pleaded Not guilty, and one had been found guilty, and the other not, there the plaintiff ſhall not recover, for then he did not conſpire as is ſuppoſed by the Writ. But it may be that they did conſpire in the caſe aforeſaid, although that the matter in law be adjudged for the defendant. And if the principall die before any verdict given F
upon the acquittall, or have a pardon and plead it, then the acceſſary ſhall not have a Writ of Conſpiracy, becauſe he is diſcharged by the death of the principall, or by the pardon to the principall.

Conſpiracy againſt two, one is attaint the other makes default, Judgement ſhall be againſt him.

24 *E.* 3. 34. but *quere* by *Stamford*, 174. for 27 E. 3. it is holden that one ſhall not anſwer without the other.

If a man be falſly indicted of felony, and afterwards by G
Act of Parliament a generall pardon is granted of all felonies, the party now ſhall not have a Writ of Conſpiracy, although he will plead unto the indictment and is acquitted, and will not plead the Act, *&c.* becauſe his life was not in danger, and the felony was diſcharged by the Act.

The

The Juſtices of Goal delivery arraign a priſoner of murder within the year where an Appeal is depending againſt the ſame priſoner for the ſame murder, which they know, and yet they proceed and acquit him, he ſhall have a Conſpiracy, although he was not acquitted nor diſcharged of the Appeal; See the Statute of *A.* 3 *H.* 7. *cap.* 1. And before that Statute it was holden, 21 *H.* 6. by *Paſton* and *Newton*, That he ſhall have a Conſpiracy; for they ſaid that he ſhould be hanged if he had been found guilty upon the arraignment on the indictment. And ſo the Statute *de Conſpiratoribus temps*, *E.* 1. which Statute doth not determine in what Caſes a Conſpiracy ſhall lye. But by the Statute of 4 E. 3. *cap.* 10. which giveth the Juſtices of *Niſi prius* and of Aſſiſe to hear and determine of Conſpiracies, Confederacies and Champerties, they cannot determine in ſhort time, they adjorn them in Banco, and ſhall be there determined.

21 H. 6. 28, 29
17 Aſſ. 1. Br. Appeal 55.

Raſtal *Niſi prius* 5. and note that before that Statute, they cannot arraigne them at the Kings ſuit.

And if a man be indicted or appealed of Treaſon or Felony, or of a Treſpaſs done in a forreign County *&c.* if he be acquit thereof, he ſhall have a Conſpiracy againſt him who procured him to be indicted or appealed, and ſhall recover treble damages by the Writ upon the Statute of 8 *H.* 6. *cap.* 80.

And if a man be indicted of Felony or Treaſon, where there is not any ſuch place within the County, he ſhall have Conſpiracy, and recover his dammages againſt the Abbettors and procurors or Conſpirators by the Statute of 18 *E.* *cap* 12.

And the form of the Writ for the acceſſary in a Writ of Conſpiracy is:

Why conſpirac. &c. *the foreſ.* A. *of that, that he have abetted and procured ſhould* D. *which was the wife of* E. F. *and* G. *of the death of him* E, *ſometimes her husband, to be appealed before* J. *and his companions lately our Juſtic. that appeal to hear and determ. to be indicted, and him on that occaſion to be taken and impriſoned, and in our priſon of* Lincoln, *untill before our ſaid Juſtic. thereupon accord. to law and cuſtom of our Realm acquitted he was,* &c. [116]

A And there are divers other Writs of Conſpiracy grounded upon Diſceit, and Treſpaſs done unto the party, which are properly actions of Treſpaſs upon the Caſe; as if two men do conſpire to indite another man becauſe he did not

arreſt a Felon, who paſſed by the Town of *N*; and becauſe they cauſed him to be indicted and amerced in the Leet of *R.* and *F*, and took and impriſoned him for that amercement untill he be acquit in the ſaid Leet.

And if men ſay and affirm unto *A*, that he hath right B unto ſuch Land, and procureth and cauſeth him to ſue an Action for the ſame againſt *B.* who is Tenant of that Land, *&c.* by which he is of neceſſity compelled to ſell other Lands or Tenements for the defence of his Land, *&c.* now he ſhall have an Action againſt thoſe who procure or conſpire to cauſe *A.* to bring this Action, *&c.*

And if two men procure or cauſe one to be indicted for C hunting in anothers Park, for which he is taken, impriſoned and put to charges untill he hath acquitted him of the Treſpaſſe, he ſhall have a conſpiracy againſt them.

46 E 3. 20. 30 E. 3. 18. Fitz. Conſpiracy. 9. And Conſpiracy ſhall be maintainable againſt thoſe who D conſpire to forge falſe Deeds which are given in Evidence, by which his Land is loſt.

42 E. 3. 14. Conſpiracy ſhall be maintainable againſt thoſe who con- E ſpire to bring an Aſſize in the name of the plaintiff againſt a defendant and to make one Atturney for the plaintiff, in which Aſſize the plaintiff was found villein, *&c.* now he may bring this Writ of Conſpiracy.

3 Aſſ. 13. 11 H. 7. 25. And Conſpiracy ſhall be maintainable againſt thoſe who F conſpire to indite one of Treſpaſſe, *&c.* whereof he is acquitted, *&c.*

40 E. 3. 19. And Conſpiracy ſhall be maintainable, becauſe the defen- G dant made one to preſent in the name of the plaintiff unto an Advowſon, and for that he did preſent one unto the Biſhop who is admitted and inſtituted, *&c.*

47 E. 3. 15. but the office ought be ſufficient. If one conſpire to cauſe a falſe Office to be found of my H Land, which is found by his procurement, *&c.* I ſhall have a Writ of Conſpiracy.

In a Conſpiracy againſt two, one juſtifies becauſe he was I then Juſtice by Commiſſion, when the plaintiff was indited before him, *&c.* and for any conſpiracy before, he pleaded *non* guilty.

8 H. 46. 11 H. 7. 24. And a Writ of Conſpiracy for inditing of Felony, doth K not lye but againſt two perſons at the leaſt; but a Writ of Conſpiracy, for inditing one of Treſpaſſe or other falſity made, as in the Caſes aforeſaid, lyeth againſt one perſon only.

And

L And a man ſhall not have a Writ of Conſpiracy for inditing him of felony againſt Husband and Wife, becauſe they are but one perſon; but againſt Husband and Wife and a third perſon it well lyeth. 38 E. 3. 3.

But if the Writ of Conſpiracy be brought againſt two, then it ſhall be ſaid properly a Writ of Conſpiracy. But if it be brought againſt one perſon only, then it is but an Action upon the Caſe upon the falſity and deceit done, becauſe one perſon cannot conſpire with himſelf.

M And the Writ of Conſpiracy may ſuppoſe the conſpiracy to be in two ſeverall places, and ſhall be good; and the Writ ought to be brought in the County where the conſpiracy is made, and not where the indictment was, or where the deed was done *&c.* 19 H. 6. 38. 22 H. 6. 49.

N There is alſo another Writ of Conſpiracy which is given upon the Statute called *Articuli ſuper Chartas*, 28 E. 1. *Cap.* 10. which Writ ſhall be directed unto the Juſtices of Aſſiſe to enquire of the Conſpiracy; and the Writ ſhall be ſuch:

The K. to his truſt. W. of S. and of his Companions, &c. *aſſign greet. Whereas amongſt other Articles which the Lord* Ed. *ſometimes King of* Engl. *to the amendment of the ſtate of his people granted, conteined it is, that of conſpirators, falſe informers, and evil procurers of dozens, aſſiſes and Furies, the Juſtices of either Bench, and Juſtic. the aſs. to take aſſign. when into the countrey they ſhall come to do their office, ſhall award inqueſts upon every mans plaint, without writ, and without delay ſhall do juſtice to the plaintiff, as in the Articles foreſ. more fully is contained: we the Articles foreſ. in all things inviolably to be obſerved willing, command you, that looking upon the Ordin. foreſ. farther at the proſecution of all and ſingular before you complaining willingly ye do, what accord. to the Ordin. foreſ. is to be done. Witneſs*, &c.

O And upon that he ſhall have an *Alias*, and a *Pluries*, and Attachment againſt the Major or Sheriff, *&c.* if they do not according to the Writ ſent unto them, or return the cauſe why they cannot do the ſame; and it ſeemeth reaſonable that the party in priſon ſhould have an action upon that Statute againſt the Recogniſor, if he finde him not bread and water in priſon, *&c.* according to the Statute.

Writ of Accompt.

9 H. 6. Accompt. 8. 6 R. 2. Belk. Accompt 47. 14 H. 4. 20.

A Writ of accompt lyeth divers wayes; for if a man make p one his Bayliff of his Mannor, *&c.* he ſhall have a Writ of accompt againſt him as Bayliff.

And if a man make one his Receiver, to receive his Rents or Debt, *&c.* he ſhall have a Writ of Accompt againſt him as Receiver.

And if a man make one his Baily, *&c.* and alſo his Receiver, then he ſhall have an accompt againſt him as Baily and alſo as Receiver.

29 H. 6. Fitz. Accompt. 6. [117] 36 H. 6. 10. 10 R. 2. Accompt. 45. &c.

A man ſhall have a Writ of accompt againſt one as Baily Q or Receiver where he was not his Baily or Receiver; for if a man receive money for my uſe, I ſhall have an accompt againſt him as Receiver; or if a man do deliver money unto another to deliver over unto me, I ſhall have an accompt againſt him as my Receiver.

And ſo if a man enter into my Land to my uſe and re- A ceive the profits thereof, I ſhall have an accompt againſt him as Baily.

vid. 43 E. 3. 21. Thorp.

And ſo if the Father doth occupy the Land of an infant, B which the infant hath purchaſed, or hath by purchaſe, the infant ſhall have an accompt againſt him as Baily of his Lands; and this Writ of Accompt may be ſued as well in the County as in the Common Pleas.

19 E. 3. Fitz. Accomp. 56. the Writ of Accompt is given to Executors by Statute, and was not at the common Law.

If a man have cauſe to have an accompt againſt one as C Baily or Receiver, if he die, his Executors ſhall have the action: But an accompt doth not lye againſt the Executors of a Baily or Receiver, for the receipt or occupation of their Teſtator. And the Writ of accompt which ſhall be ſued in the County, is a *Juſticias* directed unto the Sheriff, which is ſuch;

The K. to the Sher. of Linc. *greet. We command thee that thou Juſtic.* A, *that juſtly and without delay he make to* B. *his reaſonable Accompt for the time he was his Baily in* N, *and Receiver of the Pence of him* B, *as reaſonably ſhown may be, which to make him he ought, that no more thereupon clamour we may hear for default of juſtice. Witneſs,* &c.

And for Executors the Writ is; *That he render unto* B. *and* C, *Executors of the Teſtam. of* D, *reaſonable accompt for the time he*

he was the Baily of him D. *in* N, *or of him the deceased, as reasonably shown may be.*

D If two Merchants occupy their goods and merchandises in common unto their common profit, one of them shall have an action of accompt against the other in the County or in the Common Pleas; and the Writ in the County shall be,

The K. to the Sher. &c. *We command thee that thou justic.* A. *Merchant, that justly he make to* B *Merchant, reasonable accompt for the time he was receiver of the Pence of him* B, *for what cause soever, and contract to the common profit of them* A *and* B. *pervenient, as by law merch. reasonabl. shew he may which him to make he ought.*

Two purchase a Manner for life and one taketh upon him to be Baily to the other, no accompt lieth by 8 E. 3. Accompt 115 & 21 E. 3. ib. 66. 20 E. 1. Accompt. 127.

And this clause *Ex quacunque causa & contracta*, ought to be put in every such Writ, whether it be sued in the Common pleas or in the County.

E And the Executor of one Merchant shall have such Writ against the other Merchant, but not against his Executor;

The K. to the Sher. command A. *that he make to* B. *reasonable account for the time he was receiver of the Pence of him* B, *or baily of him* B. *in* N, *and unless he shall do it and the fores.* B. *shall thee secure*, &c. *then sum. the fores.* A. *that he be before our Justic. at* Westm. *in the quind. of East*, &c. *to show*, &c. *why he did it not, and have there the sum. and this Writ*, &c.

Note, that in a Writ which supposeth that *de tempore quo fuit receptor denariorum*; the defendant shall not say, that he hath accompt from such time to such time, but ought to shew certain for what things he hath accompted. *Contra* where the Writ is, *de tempore quo fuit Bail.* 31 E. 3. Accompt 61.

F And a Prior or Abbot or Master of an Hospitall shall have a Writ of accompt against him who was Receiver or Baily in the time of their predecessors, and the form of the Writ shall be such:

14 H. 4. Accompt. 124. 48 E. 3. 17. ib. 97. 31 E. 3. Accomp 57. 25 E. 3. 45. in the like Action the defendant said that he was not receiver of the

Command A. *that he make to* L. *Prioress of* S. *reasonab. account for the time*, &c. *baily of Alice somet. Prioress of* S. *predeces. of the fores.* L, &c. *and receiv. of the Pence of her Alice the Prioresse*, &c.

And another Writ thus, *Præcipe* A. *quod reddat.*

predecessor and admitted good. 20 E. 3. Accompt 78 Accompt with an Abbot, notwithstanding the receipt was by the predecessor.

And another Writ thus, *Command* A. *that he make to the commu-*

communalty of W. *his reaſonable account for the ſame time he was receiv. of the pence of the ſame communal. in* W. *and unleſs*, &c. *and the foreſ. communalty*, &c.

And note, that the Writ of accompt ſued in the County G may at the ſuit of the Plaintiff be removed into the Common Pleas, by a *Pone* without any cauſe ſhewed in the Writ, but ſhall not be removed out of the County by the Defendant without cauſe ſhewed in the *Pone*, &c. As if the Defendant plead a forreign releaſe, then it ſhall be ſaid in the *Pone*, *Becauſe the foreſ. Defend. in pleal. in our Court in* N. *in which the plea hangeth, by return of our Writ, hath brought forth a certain writing of acquittance, under the name of him* A. *conteining in it the foreſ.* A. *all actions which againſt the foreſ.* B *by reaſon of the account foreſ. he had to the ſame* B. *to have remiſed, in the Count. of* Linc In *made as is ſaid, which writing the foreſ.* A. *altogether hath denied, wherefore that plea in the Court foreſ. farther ought not to be deduced, let execution of this Writ be, if the cauſe be true, and otherwiſe not.*

Ve 4. E. 2. Br. 791. where it is holden if he hath any Land it is ſufficient; but there he had in the right of his wife, but 6 ſh. 8 d, and had not title to be Ten. by the Curteſie, therfore not ſufficient.

There is another manner of Writ of Accompt founded H upon the Statute of *Marlebridge*, *cap.* 23. And that Writ lieth where a man ought to make Accompt as Baily or Receiver, and hath no Lands nor Tenements by which he may be diſtreyned, but is vagrant in ſecret places, where he will not be found, then the Plaintiff ſhall have a Writ of accompt which is called *Monſtravit* upon the Statute, and the Writ is of this form:

The K. *to the Sher.* &c. *Hath ſhowen us the Prior of* N. *That whereas* A. *hath been his Baily in* K. *of all his things and goods care having, and adminiſtrat. the ſame* A. *his account not rendred, ſubterfuges ſeeking, hides himſelf in thy Bailiwick, nor can be found, nor diſtreyned, to render the foreſ. Prior his account foreſ. and becauſe of the Common Councel of our Realm, provided it is, that if Bailies who to their Lords account ought to make, withdraw themſelves, and Lands and Tenements have not by which they may be diſtreyned, by their bodies they ſhall be attached, ſo that the Sher. in whoſe Bailiwicks they are found ſhall cauſe them to come to make their account: we command thee, that if the foreſ. Prior ſhall ſecure thee his clamour to proſecute, then the foreſ.* A. *attach thou, that him thou may have before our Juſtic.* &c. *ſuch day to render the foreſ. Prior his account foreſaid as reaſonably ſhow he can to make him be ought, and have*, &c.

Bur

But this Writ is not now in uſe, becauſe that by the *Statute of Weſt. 2. cap. 12.* made after the Statute of *Marleridge*, proces of Outlawry is given in a Writ of accompt againſt Bailies and Receivers; But yet he may ſue a *Monſtravit* at this day if he will: and the form of the Writ of *Monſtravit* directed unto the Sheriffs of *London* is ſuch: [118]

The K. to the Sher. of Lond. *greet. Hath ſhown unto us* A, *That whereas* B. *hath been the Receiver of the pence of him* A, *and his Baily in* N. *the ſame* B. *his account not diſcharged ſubterfuges ſeeking, hideth himſelf in thy Bail.* &c *and becauſe,* &c. *we command you that if the foreſ.* A. *ſhall ſecure you his clamour to proſecute, that then the foreſ.* B. *you attach, ſo that him you may have before the Maior of our City of* Lond. *and you in the next huſting at* Lond. *to make to the foreſ.* A. *his account,* &c. *and have,* &c.

And the Receivers and Bailies may be put in one Writ in the *Monſtravit* thus, *Receiver of the pence of him* A, *and his Baily in* N. But if the Writ be ſued in the Common pleas, then the Baily muſt be put, *As his Baily and receiver of the pence of him* A. *in* N.

A And a Writ of Accompt lieth againſt *Gardien* in *Socage*; but the forme of the Writ doth vary from the forme of the Writ againſt the Baily, *&c.* and the form is ſuch: *See that in Accompt againſt one is Baily and Receivor,*

the Deſendant ſaid, that he was Gardien in Socage and not Baily, and good, *per* 32 E. 3. Accomp. 60.

The K. to the Sher. &c. *if* A. *ſhall,* &c. *then ſum.* &c. B. *That he be before our Juſtic.* &c. *to ſhow, whereas of the Common Councell of our Realm, provided it is, that Gardiens of Lands and Tenements held in Socage, to the heirs of thoſe Lands and Tenements, when their full age they have attained, ſhall make their account of the iſſues of thoſe Lands and Tenements pervenient, from the time which that Wardſh. they had by reaſon of minority of the heirs foreſ. the ſame* B. *the foreſ.* A. *his reaſonable account of the iſſues pervenient of the Lands in* N. *held in ſocage, and of which the Wardſh. the ſame* B. *had, whileſt the foreſ.* A. *within age was, to make refuſeth, as is ſaid, and therefore,* &c. 13 E. 3. Accompt. 77. Notwithſtanding that he be not Gardien in droit, if he defend. hath the

occupation or manurance of the Land, the Action lieth, *per* 32 E. 3. Accompt 59. Lin. 27.

And

vid. old N B. 9 and after 149 *B.* for admeasurement of Dower by infant.

And if a man during the minority of the Heir enter into B the Lands of the Heir which he hath by Deſcent, and take the profits to the uſe of the Heir, the Heir at full age ſhall have an accompt againſt him as Gardian for the profits received untill he come of the age of 14 years; and for the profit received after the *Heir* came of the age of 14 years, he ſhall have a Writ of accompt againſt him as Baily, and not as Gardian, for he cannot be Gardian longer for *Socage*-Lands but till 14 years age: But the heir ſhall not have an action of accompt againſt him as Gardian untill the Heir be of full age of one and twenty years, and that by the words of the Statute, which are, *Qui cum ad ætatem pervenerit*, &c. But he ſhall have an action of accompt againſt him as Baily during his Nonage, at what time he will, againſt him who taketh the profits of the Lands which he hath by Deſcent, be he Gardian in Socage in Right, *&c.*

16 E. 2. Accompt 120. & 4 Mar. Dy. 137.

And a Writ appeareth in the Regiſter, That if a man be C found in arrerages upon his accompt, and the party Plaintiff do arreſt him in *London* for thoſe arrerages, then he may ſue a Writ in Chancery directed unto the *Sheriff* rehearſing the whole matter, commanding the *Sheriff* to detain and keep in priſon he who is ſo arreſted, untill he hath ſatisfied and paid the arrerages. And it ſeemeth by the ſame reaſon, That if a man ſue an action of Debt upon arrerages of accompt before Auditors, and hath the party arreſted, That he ſhall have a Writ out of the Chancery unto the Sheriff, to keep him in priſon untill he hath paid thoſe arrerages; but I conceive this Writ doth not ſtand in Law, that he ſhall be kept in priſon without anſwering unto the ſuit commenced againſt him.

14 H. 16. 4. 16 *E.* 3. Accompt 52.

A man may have a Writ of accompt againſt a woman as D *Receptrix denariorum*, or againſt a Chaplaine, but not againſt an infant.

A man may have an accompt againſt one as Baily of a E Court or Hundred.

8 H. 5. 2. 47 E. 3. 16. 4 E. 3. ac. 44 E. 3. but 5 E. 3. 22. fitz Accompt 100. cont.

And a man ſhall have an account againſt a Prior upon a F Receipt had by his Commoign, but there the Writ doth ſuppoſe, that he himſelf did receive the money, *&c.* and ſhall not ſay, by the hands of his Commoign. And ſo a Receipt made by the Husband, by the hands of his wife, is his own Receipt, and the Writ and the Count ſhall ſuppoſe that

that he himſelf did receive, *&c.* without ſaying by the hands of the wife: but it is otherwiſe. If a Prior or husband receive money of a ſtranger, then the Count ſhall be that he received by the hands of the ſtranger, *&c.* But the Writ ſhall be general, *Tempore quo fuit receptor denariorum*, without ſaying, by whoſe hands, but he ſhall ſhew that in the Count or declaration.

G And if a man deliver goods or money beyond Sea to deliver to him again in *England* at a certain place, he ſhall have an account for thoſe goods. *&c.* 41 E. 3. 9. 12.

And if a man deliver money to one upon condition, that if he do ſuch a thing that he ſhall have the money, if not, then he who delivered it ſhall have it again; if he perform not the Condition, he ſhall have an account againſt him for the ſame. 41 E. 3. 10.

H If two have goods in joynter, or in common, and one of them deliver the goods to one to render account, he alone ſhall have the action for them. 11 H. 4. 18. ac. 11 H. 4. 75. ſhew. 21 E. 3. Accomp. 66.

I If two have a Ward, and one take all the profits, the other ſhall have an accompt againſt him. *P.* 45. *E.* 3. 43 E. 3. 21. 45 E. 3. 20.

[119]

A If the husband hath received the profits of the wives Lands and die, the wife ſhall not have a Writ of account of the profits nor of the Rents during the Coverture againſt the husbands Executors.

B If a Receivor or Baily make a Deputy, yet the action of accompt ſhall be brought againſt the Receivor or Baily themſelves, and not againſt their Deputies, for the Deputies receive the ſame to their Maſters uſes. 4 E. 3. 17. ſix Accompt 97

C He who is ſurveyor or Controller of Lands ſhall not be charged in accompt. 11 R. 2. Accompt 48. 41 E. 3. Accompt 34. 12 E. 3. ibid. 75. & 13. E. 3. ibid. 76.

D An apprentice ſhall not be charged to accompt by a writ of accompt: But the Maſter ſhall have a Writ of accompt againſt a Servant who is ſent to receive money, *&c.* if he be Receivor. 6 E. 3. 3. Accompt 102. 8 E. 3. accompt 94. *vid.* Accompt as Receivor,

the Defendant ſaid, that he was his Apprentice, and no plea, but he was forced to anſwer to the Receipt.

E The Pariſh Prieſt ſhall not be charged for the Offerings offered by a writ of account, if it be not otherwiſe agreed 25 E. 4. 46. Accomp. 86.

betwixt

betwixt them, *&c.* For the Clark holds the veſſel in which they are put.

If the King grant unto a Town the Toll of the things F ſold in the ſame Town for the walling of the Town, and other neceſſary things in the Town, and there be Collectors to receive the ſame, if the Collectors will not render accompt thereof, they may have a Commiſſion out of the Chancery to enquire of the Receipt of the Toll-money, and the Receivors, and to hear and determine the ſame, and to hear their accompts, and a writ of attendance unto the Sheriff, to return a Jury before the Commiſſioners.

Writ of Debt.

C. 5. p. 79. 10 *H.* 67. Debt per Amerciement in Leet. 22 *H.* 6. 56. 13 H. 7. 3. in Debt againſt Succeſſor upon debt afore to his Predeceſſor which comes to the uſe of the houſe, the *Writ* ſhall be in the *Debet.*

A Writ of Debt properly lieth where a man oweth unto a- G nother a certain ſumme of money by obligation, or by bargain for a thing ſold, or by contract, or upon a Loan made by the Creditor to the Debtor, and the Debtor will not pay the Debt at the day appointed that he ought to pay it, then the Creditor ſhall have an Action of Debt againſt him for the ſame; and it may be ſued in the County before the Sheriff by Juſtices, as well as in the common Pleas; and the form of the writ is ſometimes in the *Debet & detinet*, and ſometimes in the *Detinet* only, and not in the *debet*, and if it be in the *Debet* it ſhall abate. It ſhall be alwaies in the *Debet* and *Detinet*, when he who makes the bargain or contract, or lends the money, or he to whom the Bond is made bringeth the Action againſt him who is bounden, or party to the Contract or Bargain, or unto the lending of the money, and money delivered by the writ. But if a man ſell 20 quarters of H wheat, or a horſe; if he bring Debt for the horſe, the writ ſhall be in the *Detinet* only; and the form of the writ ſued in the County before the Sheriff for money, is ſuch:

In Debt againſt Huſband and wife for a Debt before Coverture, the *Writ* ſhall be *Debet & detinet*, ſo in Debt againſt or for the Succeſſor in reſpect of obligation made to the Predeceſſor. 47 E. 3. 23. 40 E. 3. 16. 9 E. 4. 41. 47 E. 3. 23. If the Heir be to bring Debt it ſhall be in the Detinet.

The K. to the Sher. of Surry *greet. We command thee that thou juſtic.* A. *that juſtly and without delay he rend.* B. xx. ſh. *which him he oweth, as is ſaid, as reaſonably ſhow he can, that to render him he ought, that no more therefore a clamour we hear*

hear for default of Juſtice, &c. *Witneſs*, &c.

And if the Writ of Debt be for other goods or chattels then money, then the Writ of Debt ſhall be ſuch: *The K. to the Sher.* &c. *We command thee that thou Juſtic. of* A, &c. *that he rend.* B. *a certain book, or a certain Cup, or a certain Horſe, or two Lambs of the price*, &c. *which from him*, &c. *injuſtly he deteineth, as*, &c.

I And if the Writ of Debt be brought in the County before the Sheriff by Juſtices, the Plaintiff may remove the plea unto the Common Pleas by a *Pone* without ſhewing cauſe in the Writ: But the Defendant ſhall not remove the plea out of the County without ſhewing cauſe in the *Pone*, and yet in the end of the Writ it ſhall be ſaid, *Let Execution be made of this Writ, if the cauſe be true, elſe not.* And the cauſes wherefore the Defendant may remove the plea, are many, as appeareth in the Regiſter. Or, if the Defendant plead a forreign plea, which cannot be tried in the County, *&c.* Or if the Defendant ſhew, that he before whom the plea is depending, doth maintain the Plaintiff, or favour him, *&c.*

K And if the plea of Debt be ſued within any liberty, or Court of any Borough, or City, *&c.* the Plaintiff may remove the plea by a *Recordare* into the Common Pleas without ſhewing any cauſe in the Writ. But if the Defendant ſue to remove the plea by a *Recordare* into the Common Pleas, out of any Town or City, he ought to ſhew cauſe in the Writ as before is ſaid. And if the Sheriff remove the Plea out of any Court by a *Pone* at the ſuit of the Defendant or Plaintiff; and afterwards the Bailiffs or Officers of the Court proceed in the Plea, and give Judgement and award Execution, *&c.* then the Defendant, or he againſt whom the Judgement is given, and Execution awarded, ſhall have an Attachment againſt the Bailiffs or thoſe who ſo proceeded to Judgement, *&c.* to anſwer as well the King for the contempt, as the party his damages, *&c.* And the form of the Writ of Debt in the Common Pleas is,

L *The K. to the Sher.* &c. *command* A. *that juſtly*, &c. *he rend.* B. *one hund. th which him he oweth, and unjuſtly deteineth, as is ſaid, and unleſs he do it, and the foreſ* B. *ſhall ſecure thee*, &c. *then ſum. by good ſum. the foreſ.* A, &c.

M And the Rule in the Regiſter is, *That in the Writ of Debt of Chattels, it is never ſaid, which he oweth him.* And if Debt 19 H. 6.

be

be brought by Executors for a Duty due to their Teſtator, the Writ ſhall be *Quos ei detinet*, and not *Debet & detinet*, becauſe they were not parties to the contract. And ſo it Debt be brought by the Creditor againſt Executors for the Debt of the Teſtator, the Writ ſhall be *Quos ei detinent*, &c. and not *Debent & detinent*, although by the Writ he demand money; [120] ſcil. 20li. or other ſum of money.

If a man make *B.* and a monk his Executors and is endebted unto another, the action of debt ſhall be brought againſt *B*, and the Abbot and the Monk, and the form of the Writ ſhall be ſuch: A

Command B. *Execut. of the teſtament of* S, *and the Abbot of* C. *and Friar* A. *of* C. *concanon of the ſame Abbot of* C. *coexecutor of the teſtament forcſ.* 20li, &c. *and ſo if they bring an act. the Writ ſhall be, command* D, &c. *that he rend.* B. *execut. of the teſtament of* S, *and Abbot of* C, *and Friar* A. *of* C. *concanon of the ſame Abbot of* C. *execut. of the forcſ.* B. *of the teſtament forcſ.*

Joynder in Action 5. chriſtine arriver. vid. 16. Ed. 18 Keet's Aleſe for years to a ſecular man & an Abbot gave now they h Ii. See 15 Eliz. Plow. 441. liter dent. 171. the heir of the heir ſhall be charged.

And if a man be bound unto B and an Abbot in 20l, and B. dieth his Executors and the Abbot ſhall joyn in the action of Debt. and the Writ ſhall be ſuch:

Command C, &c. *that juſtly*, &c. *he rend.* B. *and* M. *execut. of the teſtament of* R. *and Abbot of* C. 20l, &c. *which*, &c. *and unleſs*, &c. *and the forcſ. execut. and Abb. ſhall*, &c.

And if a Writ of Debt be brought againſt the heir upon an Obligation of his Anceſtors, the Writ ſhall be ſuch: *Command* A. *of* S, *ſon and heir of* B. *that he rend.* &c.

And if there be divers heirs, then the Writ ſhall be: C *Command* A. *of* S. *brother, and one of the heirs of* B. *and* B. *coſen, and another of the heirs of him* B, &c.

And if a man be in debt, and die inteſtate, or the Execu- D tors refuſe to be Executors, for which the goods come to the hands of the Ordinary, the creditors ſhall have an action of Debt againſt the Ordinary by the Statute of *Weſt.* 2. *cap.* 19. and the Writ ſhall be ſuch:

Command A. *the Biſh. of* Lincol. *to whoſe hands the goods and chattels of* B. *which were, who died inteſtate as is ſaid, came, that juſtly*, &c. *he rend.* &c.

And if the goods come unto the hands of the Ordinary, and afterwards the Ordinary maketh Executors and dieth, the creditor ſhall have an action of Debt againſt the Executors of the Ordinary, and the Writ ſhall be ſuch:

Com-

Command A of B and C of T, *execut. of the teſtament of maſter* R of P *lately Dean of the Church of bleſſed Peter of* York, *and the keeper of the ſpiritualty of the Archbiſh. of* York, *the ſea being vacant, and to whoſe hands the goods and chattels of* E *of* B *which were, who died inteſtate as is ſaid, came, that juſtly,* &c *they render,* &c.

And it appeareth by the Regiſter, that in *Ao. 16. E. 3.* the plaint. was anſwered unto ſuch Writ which he brought againſt the Executors of the Ordinary.

And there is a Writ of Debt in the Regiſter for the Ordinary, againſt him who was indebted unto him who dyed inteſtate. But the opinion of the Sages of the Law at this day is, That the Ordinary ſhall not have an action of Debt againſt thoſe who were indebted to the inteſtate, becauſe the action is given to the adminiſtrator, and the Ordinary may commit adminiſtration of the goods when he pleaſeth. But before the Statute of *31 E. 3. cap.* 11. the adminiſtrators could not have an action of Debt againſt the debtors, wherefore it was then thought reaſon, that ſome perſon ſhould have the action for thoſe debts, *&c.* But the Ordinary at this day may have an action of Treſpaſs for taking of the goods out of his own poſſeſſion, but not for taking them out of his poſſeſſion who died inteſtate, as Adminiſtrators may have. 14 H. 4. 30. ſo againſt Gardian of the ſpiritualties.

E If a man be retained in *England* to do ſervice beyond ſea, receiving 10 *per an.* he ſhall have an action of Debt in *England* where the retainer was. 48 E. 3. 3.

F If a man marrieth a woman who is in debt to divers perſons, the husband and wife ſhall be ſued for theſe debts living the wife, but if the wife dye the husband ſhall not be charged for the debt after the death of the wife, if the Creditor of the husband and wife do not recover the debt during the coverture, which was due by the wife before the coverture; for then, although the wife dieth, yet the husband ſhall be charged for that debt by that recovery after the death of the wife.

G A man ſhall be charged in debt for the Contract of his Baily or ſervant, where he giveth authority unto his Baily or ſervant, to buy and ſell for him, and ſo for the Contract of the wife, if he give ſuch authority to his wife, otherwiſe not. 2 R. 2. Fitz. Dett. 3.

H If a man leaſe lands for years rendring rent, and for de-

17 E. 3. 48. 18 E. 3. Dett. 6. 36 E. 3. 7. Dett. 10.

fault of pay, that he shall reenter; if he do reenter in the land for not payment of the Rent, yet he may have an action of Debt for the rent, for which he doth reenter, and in the Writ shall recover the Rent for which he reentred.

14 E. 3. Dett. 135. A man was bound to one and his heirs, and holden the heir should not have debt living the Executors.

If a man binde him and his heirs unto another in 20l, I and dieth, the heir shall be charged to pay the same, if he have lands by descent in fee simple from his ancestors, otherwise not; But if a man be bounden in an Obligation to one and his heirs, and the obligee dieth, his heir shall not have an action of Debt upon the obligation, but his Executor.

9 H. 6. 58. the heir shall not have Detinue for a deed bayled by his father. 19 H. 6. 41. 48 E. 3. 12. it is not said, that if the Ordinary do not commit administration, the heir shall have Debt.

19 H. 2. Debt 264. 45 E. 3. 24. ac. if it be by deed.

If a man promise to one 20l to marry his daughter, and he K marrieth her, he shall have an action of debt against him upon that promise, *H.* 31. *E.* 3.

25 E. 4. 32. cont. per Cur. 37 H. 6. 8. ac. 21 H. 7. 5.

If a parson have an annuity in fee in the right of his L Church, and the annuity is behind, and the Parson dieth, his Executors shall have debt for the arrerages of the annuity in the life of the Testator.

7 H. 6. 19. 21 H. 4. 95. *Thorning* and *Skrene*, that he may distrain for the penalty. *Qd. non est lex.*

If a man grant to one a Rent in fee, and further grant, that M if the rent be behinde, *&c.* that he shall forfeit for a penalty 40 s. to the grantee and his heirs: If the rent be arrear, the grantee shall have debt for the penalty. And so the heir shall have the penalty, and shall have debt for the same, because it is as inheritance, and perhaps may continue, *&c.*

[121] But note, that if a man be in prison by *Capias ad Computand.* and after escape, no debt; but action upon the Case, because he is not in prison for any duty. b. *Cheb & Pigot* 15 E. 4. 19. 16 E. 4. 2, & 3.

If a man condemned in debt or damages, and be com- A mitted unto prison for the same, if the Gaoler suffer him to go at liberty, or he escape out of prison, the Gaoler shall be chargeable in debt, to him at whose suit he was imprisoned, and his Executors.

If a man lend another man a horse untill a certain day, B and then he to redeliver the horse or 10l at the same day, after the day if the horse be not redelivered, it is in his election to

30 E. 3. 16. bring an action of debt for the horse in the detinet, or

an

an action of debt for the 10l in the *debet*.

C If a man maketh a leaſe for life unto a woman, rendring Rent, if he marry, and after the rent is behind, and the wife dieth, the husband ſhall be charged in an action of Debt for the Rent behind, becauſe he took the profits of the lands by reaſon of his wife. Otherwiſe is it of an Obligation made by his wife before marriage, then the husband ſhall not be charged if a recovery be not againſt him and his wife in the life of the wife. 26 E. 3. 64. Dette 180. 10 H. 6. 11. 7 H. 6. 29. 20 H. 6. 45. Aſcough. 49 E. 3. 25.

If a woman be endowed of a Rent, and afterwards taketh husband, and the rent is arrear, and the wife dieth, the husband ſhall have an action of debt for the rent, becauſe it was a duty in him during the marriage. But if a man be bounden unto a woman, and ſhe taketh husband, and the day of payment cometh during the marriage, and after the wife dieth, the husband ſhall not have an action of Debt upon the bond, becauſe it was a duty due unto the wife, and a thing in action before the marriage. *vid.* 14 H. 6. 26. 10 H. 6. 11.

D If a Parſon have an annuity in fee, and the ſame is behinde, and the Parſon doth reſign, yet he ſhall have an action of Debt for the arrerages before the reſignation. 12 H. 6. 4. *Quare for Aſſus and Newport.*

E And if a man leaſe a Mannor for life, and the rent is behinde which the Tenants who held of the Mannor are to pay, and the leſſee for life of the Mannor dieth, his Executors ſhall have Debt for the arrearages of the rent due by the Tenants of the Mannor.

And ſo if the Tenant for life of the Mannor, ſurrender his eſtate to him in the reverſion of the Mannor, yet he ſhall have Debt againſt the Tenants of the Mannor for the arrearages before.

F If a man have a Patent from the King to have a certain ſum for term of years or for life out of the Cuſtoms of *London*, and thereupon he have a *Liberate* to the Cuſtomer to pay him, which he delivereth to the Cuſtomer, at which time the Cuſtomer hath enough in hands to pay him, now by the delivery of the *Liberate* and the Aſſets in the hands of the Cuſtomer, the Cuſtomer is debtor unto him, and he ſhall upon this matter, have debt againſt him. 17 H. 8. 15. If a *Liberate* be delivered to Cuſtomers or other Collectors, that will ſatisfie that they ſhall be diſcharged againſt all others. 27 H. 6. 9. ac. 21 H. 6. Dett. 43.

G If two ſubmit themſelves to award, and the Arbitrators award, that one ſhall pay the other 10l, he ſhall have an

action of Debt upon that arbitrement.

37 H. 6. 35. If an Abbot hath an annuity in fee, and the same is be- H
hinde, he shall not have an action of Debt for the arrearages, becaus the annuity continueth.

Neither shall a Parson have an action of Debt for the ar- I
rearages of an annuity which he hath in fee during the time that he is Parson; but if he resign he shall, or if he dieth his
38 H. 6. 5. Executors shall have an action of Debt for the same. And if
7 H. 4. 3. a man who is Baily do accompt before Auditors, and it is found that he hath expended more then he hath received, for the surplusage, he shall have an action of Debt against the Lord whose Baily he was. But if a Receivor account and is found in surplusage; many say that he shall not have an action of Debt for the same, because he is not bounden to lay out any parcell thereof; but it seemeth if he do it by the command of the Lord, that then it is reason that he have an action of Debt against the Lord for the surplusage.

41 E. 3. Dett. 127. An Abbot shall be charged in an action of Debt upon a K
loane of money made unto his predecessor, if the money came to the use of the house.

5 E. 4. 36. the Writ shall be general and the Count special. An Atturny shall have an action of Debt against his Cly- L
ent for money which he hath paid unto any person for his Clyent, for cost of suit, or unto his Councell, &c.

If a man contract to pay money for a thing which he hath M
bought; if he make a Bond for the money, the Contract is
20 H. 6. 21. discharged, and he shall not have an action of Debt upon the
Newton. Contract.
26 H. 6. 4
25 H. 8. 22. ac. 1 H. 6. 8. per Babington. 9 E. 4 20. and so 10 H. 7. 21. and 14.
22 H. 6. 16. 21 H. 7. 5. Carter. 3 H. 4. 17.

If a man make a lease for years, rendring rent of lands de- N
visable by will, and afterwards divideth the reversion of the
5 H. 7. 18. ac so Lord by Escheat of a reversion. same lands unto a stranger in fee, the devisee shall have an action of Debt for the rent reserved, without any attornment of the Tenant for years: But if the lessor hath granted the reversion by fine or by deed, the grantee shall not have an action of Debt without attornment of the lessee for the rent reserved.

4 E. 4. 25. Danby 5 H. 7. 14. Brian. 13 H. 4. Dett. 167. 34 H. 8. If a man be indebted and entreth into Religion, his Exe- O
cutors shall be sued for the debt, and not the Abbot who accepted him into Religion.

If a man be condemned in Trespasse, or in Debt upon a F
Bond,

Bond, where he denieth his deed, and afterwards he is taken by a *Capias pro fine* at the Kings ſuit within the year, and committed to priſon, if the Goaler ſuffer him to eſcape, he ſhall have an action of Debt againſt the Gaoler, yet he was not committed to priſon at his ſuit, but at the Kings ſuit: But within the year after the condemnation and judgement, the ſuit for the King ſhall ſerve as well for the party as the King, becauſe the King was intituled to it by the party, but after not, for it ſhall be intended that the party is agreed with him who is condemned; and therefore after the year he ſhall be put to his *Scire facias* upon the Judgement. 7 H. 6. 5. 1 H. 6. Dett. 26. 7 H. 4. 4. 4 E. 4. 15. 21 E. 4. 67. 7 H. 4. 14. 48 E. 4. 16. 22 Aſſ. 74. 21 E. 4. 67. 14 H. 7. 15, 19 20. 11 H. 4. 44. Skrene.

A If a man leaſeth lands for term of years rendring rent, and afterwards the rent is behinde, and the leſſee ſurrendreth his term, yet the leſſor ſhall have an action of Debt for the arrearages before, as it ſeemeth by *P.* 38, *E.* 3. *tamen quære*, for the opinion is contrary to 2 *H.* 6. [122] 9 E. 3. 7. Dett. 149. 10 H. 6. Dett. 143. *vid.* 14 H. 8. 14. for waſt.

B If a ſervant will not do his ſervice, by the Statute of 14 *E.* 3. *cap.* 9. he ſhall be arreſted and committed to the Goal, and if the Goaler ſet him at large he ſhall loſe 10*l* to the King, and 5*l* to the party; now if the Goaler ſet ſuch priſoner at large, the party who would have him detained ſhall have an action of Debt againſt the Goaler. 7 H. 6. 2.

C If a man recover dammages in an action of waſt, he may have an action of Debt upon the recovery if he will. 43 E. 3. 2.

D And ſo a man may have an action of Debt upon a Statute Merchant or Staple, or upon a Recogniſance, or may have execution according to the Statute at his pleaſure. 3 E. 4. 27. *Quære.* 43 E. 3. 2.

E A Prior did recover an annuity in fee againſt a Parſon, and afterwards he ſued a *Scire facias* againſt the Parſon, and did recover in the *Scire facias* the arrearages of the annuity, and afterwards he brought an action of Debt againſt the Parſon upon the recovery in the *Scire facias* for the arrearages, and it was maintainable.

F An Abbot ſhall be charged in an action of Debt for victuals or other neceſſary things bought by the Butler, or other Officer who is deputed to make prepeyance for the Abbie in time of vacation. 26 E. 3. 55. Dett. 165.

G If a man levy aid of his Tenants for the marriage of his daughter and dieth, the daughter not married, the daughter ſhall have an action of Debt againſt the Executors of her Father for the aid levied; and if the Executors have not any thing, ſhe ſhall have an action of Debt againſt the heir 3 E. 3. Itin. North. Eitz. Dett. 57. See 32. I. 40.

for that aid if he have any thing by deſcent.

30 E. 3. Dec. 331. If two Coparceners make partition, and one granteth or promiſeth unto the other a certain ſumme of money for the equality of the partition, ſhe ſhall have an action of Debt upon this promiſe, and ſhall recover the money.

12 R. 2. Dct. 3. 44 E. 3. 21. 44 E. 3. 21. & 9 H. 5. 24. If a man become debtor for another by word, it ſhall not make him debtor, if not by the cuſtom of *London*. If a man make a Tally, and make a Bond thereupon, and I ſeal and deliver it as his deed; yet it ſhall not binde him, but he may plead againſt the ſame, that he owed him nothing, or wage his law: for an obligation ought to be made in writing in parchment or paper, and not written upon any piece of wood, as a Tally is.

And a man ſhall have an action of Debt againſt him who K becometh pledge for another upon his promiſe to pay the money, without any writing made thereof, *qd. vid.* in title Pledge acquittand. *P.* 43. *E.* 31.

Writ de Rationabili parte Bonorum.

If the father hath two ſons, and maketh one of them his Executor, *Quere* if he ſhall have any part as ſon, becauſe he is Executor and hath advancement by that. THis Writ lyeth where the Wife after the death of her L Husband cannot have the third part of her Husbands goods after his debt paid, and Funerall expences performed; for then ſhe may have this Writ againſt the Executors of her Husband: and it ſeemeth by the Statute of *Magna Charta*, *cap.* 18. that this was the Common Law of the Realm; and ſo it appeareth by *Glanvill*, that it is the Common Law, that after the debts paid, the goods ſhall be divided into three parts, one part for the Wife, another part for Sons and Daughters, and the third unto the Executors; but yet the Writs in the Regiſter rehearſe the Cuſtoms of the Counties, and are of this form:

A woman did deliver the moyety of her husbands goods, becauſe he had no children, and counted upon the cuſtom of the Realm 21 E. 3. *But* 21 H. 6. 1, and 2. ſeemeth it is by cuſtom and not by the Law of the Land. 7 E. 4. 20. ac. M. 18. & 19. *Eliz.* in *B. R.* A *Writ* was brought and allowed there, notwithſtanding that exception was taken at it, it was maintainable by ſpeciall Cuſtom in *London*, 1 E. 4. 5. Pilling. ac.

30 H. 6. Reſpondr. 95. A woman brought the *Writ* for the moity, and counted upon the Cuſtom, not ſpeaking of any Tar. or that it was the Cuſtom of the Realm. 28 H. 6. 4. 40 E. 3. 38. 3. E. 3. Dett. 156. Counts by the Cuſtom of the Town of *Northampton*. 17 E. 9. 9 and 76. that it is by the Common Law. 7 E. 4. 20. Exception was taken becauſe he did not count that the Cuſtom did continue.

The K. to the Sher. &c. If A which was the wife of B, &c. ſhall, &c. then ſum. C and D, Execut. of the teſtam. of the forel. B, that

B, that they be, &c. to ſhow why, whereas accord. to the cuſt. in the Coun. foreſ. hitherto obtained, Wives after the death of their Husbands, ought to have their reaſonable part of the goods and chattels of their Husbands foreſ. the ſame Execut. from the foreſ. A her reaſonable part to the value of ten Marks, of the goods and chattels which were his the foreſ. B her Husb. detain leſs juſtly, and thoſe her to render refuſe, to the no ſmall damage and grievance of her A, and againſt the Cuſt. foreſ. and have there the ſum. and this it writ, &c.

And the like Writ the Sons and Daughters may have againſt the Executors; and the form is:

1 E. 2 Fitz. Detinue 56l. 30 E. 3 ibid.

52. And ſee 31 H. 8. it hath oftentimes been put in ure as common Law and never demurred upon.

The K. &c. Becauſe A of N. and S his ſiſter have ſecured us, &c ſum. &c J of H and E Execut. of the Teſtament of R of N that they be, &c. to ſhow why, whereas accord. to the cuſt. in the Count. foreſ. hitherto obteyn. and approved, the children after the death of their fathers, who their heirs are not, nor in the life of their fathers promoted were, ought to have their reaſonable parts of the goods and chattels which were their fathers foreſ. the ſame Execut. of the foreſ A of N and S, after the death of the foreſ. R their father, whoſe heirs they are not, nor who in the life of the ſame their father promoted were, their reaſonable parts to the value of ten pounds, &c. as above.

Manage is no advancement if the Fathers goods be not given in his life, for iſſue was taken thereupon. 3 E. 3. Dett. 156.

Secta ad Molendinum.

M *Secta ad Molendinum*, lyeth, where a man by an uſage time out of minde, *&c.* hath uſed to grinde his Corn at the Mill of *B*, and afterwards he goeth unto another Mill, and withdraweth his ſuit from *B* Mill, then may he have this Writ. And alſo it ſeemeth that the Lord may have this Writ againſt his free-Tenants who hold of him to do ſuit at his Mill, and yet he may diſtreyn his Tenants for the ſuit, and avow for the ſame.

Quere If a man may create a Tenure at this day upon a gift in tayl, or ſuch eſtate, P. 20. *Eliz. Cai. B.* a Leaſe was made for life of parcell of the demeans doing ſuit to his mill, and good.

A And by preſcription a man may have ſuit to his Mill, of the villeins of a ſtranger, and have *ſectam ad molendinum* againſt them, and that it ſeemeth by reaſon of their reſidence in certain which they dwell upon. And this Writ is ſometimes vicontiell, and ſhall be ſued in the County by a Writ of Juſtices, at the plaintiffs pleaſure, or in the Com. Pleas by a

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Note, that Tenant for life or a Mannor shall not have this Writ, because it is in the *debet & solet*. 20 Eliz. Dyer. Br. Note, 127, 128. *Curia Clauendia* lieth for Tenant for use, and yet the Writ is, *Debet & solet.*

Pracipe. &c. and the form of the Writ in the County is such: *The K. to the Sher.* &c. *We command thee that thou Justic.* A, *that justly and without delay he maketh his suit to the Mill of* E *of* N *in* C, *which to it he oweth and useth, as is said as reasonably show he may, that no more therefore a clamour we may hear for default of justice. Witnesse,* &c.

And if the Writ be sued in the Common Pleas, the Writ A shall be thus;

Command A, *that justly and without delay he make suit to the Mill of* E *of* N *in* C, *which to it to make he ought, and useth as is said, and unles he shall do it,* &c. *then sum.* &c.

And by the Rule in the Register, a man shall have a Writ B of *Secta*, &c. *quod faciat sectam ad furnum, & ad thoral. & ad omnia alia hujusmodi.* And Tenant for life, or in Dower, may maintain this Writ in the *debet & solet*, for this is of the nature of a Writ of the possession, but in the *debet* only seemeth to be in the meer right. And the def. shall have the C view in a *Secta ad molendinum* in the *debet* and *solet* of Land, *&c.* of the mill in which the suit is to be done. And the pro- D ceis in a *Secta ad molendinum* shall be summons, attachment, and distress, *&c.* and if he do appear after default, then shall issue a *Distringas ad audiendum Judicium*, and yet he may sue his default. And you may see the form of the Court in this E Writ, in the book of *Entries*, where he counteth upon a tenure of Land, *&c.* and another Count, where he counteth upon prescription; So that the Tenant and all those which held those lands have used to do their suit at his mill. *qd. vid f.* 169.

Quod permittat.

Quod permittat lyeth, where a man hath common of pa- F sture for his Cattell, and he is disturbed by a stranger that he cannot use his Common, then shall he have this Writ. And this Writ may be sued by Justices in the County, G or in the Common Pleas; and the form of the Writ is,

27 H. 8. 12. *The K. to the Sher* &c. *We command thee that thou Justice* A, *that justly,* &c. *he permit* B *to have common of pasture in* N *for one hund. sheep,* &c. *or for one hund. Oxen,* &c. *which to have he ought, as is said, as reasonably,* &c. *that no more thereof a cla-*

a clamour we may hear. Or thus, *Common of paſture in the Land of him* A, *which in it to have he ought*, &c. Or thus, *That he permit* A *to have common of paſture in one hund. acres of him* A.

And the Rule in the Regiſter is; when common of paſture is claimed in the Land of any perſon certain, then the certain number of Cattell are not put in the Writ, *&c.* but the form of the *Quod permittat* ſued in the Common Pleas is ſuch; *vid.* 2 H. 4. 13. View grantable in this *Writ*, yet it is ſaid, 3 E. 3. that the defendant cannot vouch in a *Quod permittat*, for that it is not a *Tracipe quod reddat*, Vide 45 E. 3. 8. in the view.

The K. *to the Sher.* &c *Command* A, *that juſtly*, &c. *he permit* B *to have common of paſture in* N *and* 40 *acres of wood which to have he ought and uſeth, as is ſaid, and unles he ſhall do it, and the foreſ.* B *ſhall thee*, &c. *then jum.* &c.

And another form of the Writ for common append. thus;

The K. *to the Sher.* &c. *Command* A, *that juſtly*, &c. *he permitteth* B *to have common of paſture in* N, *which belongeth to his frank-tenement in the ſame Town or in another Town of which the ſame* A *or the father of the foreſ.* A *whoſe heir he is*, *unjuſtly and without judgement diſſeiſed*, R *the father of the foreſ.* *whoſe heir he is, after the firſt paſſage of the Lord* Hen. *ſon of King* John *into* Gaſcoin, *as is ſaid, and unles*, &c. Note, This Writ is in the nature of a Writ of Entry upon a diſſeiſin made to his Anceſtor.

H And the Rule in the Regiſter is, That the Writ of *Quod permittat* lyeth of common of paſture, turbary, piſcary, and reaſonable eſtovers, againſt a diſſeiſor of a diſſeiſin made to the plaintiff or his anceſtors, by him or his anceſtors, and not in other degrees, becauſe he ought to have a Writ of Right in the *debet & ſolet.*

But an Abbot may have a Writ of *Quod permittat* of a diſſeiſin made unto his predeceſſor, and ſhall make mention of the diſſeiſin in his Writ.

I And the form of the Writ *de libera piſcaria* is ſuch;

Command A, &c. *that he permit* B *to have free piſcary in the water of him* A *in* N. Or thus, *in the water in* N *which in it to have he ought, and uſeth as is ſaid, and unles*, &c.

K There is another form of the Writ of *Quod permittat*, in the nature of *Mortdauncеſter*, and is ſuch;

The K. &c. *Command* A *that*, &c, *he permit* B *to have common of paſture in* N. *in which* C *the father, or mother or ſiſter of him* B *whoſe heir he is, was ſeiſ. as of fee, as belonging to his frank-tenement in the ſame Town the day which he died, as is ſaid, and unles*, &c. 3 E. 25. *Quod permittat.*

And

And if it be a Common in groſſe, then he ought to put L this clauſe in the Writ, *tanquam pertinens ad liberum tenementum ſuum*, &c.

31 E. 3. *Quod permittat* 8. 30 E. 3. 3. *Quod permittat.* 4. A Prelend had the Writ for miſhering a water in the time of his predeceſſor.

And ſo a Parſon or an Abbot, ſhall have a *Quod permittat* of the ſeiſin of his predeceſſor, and the Writ ſhall ſay, *Command*, &c. *that he permit* B *Parſon of the Church of* C, *to have common of paſture in* N, *of which* F *ſometimes Parſon of* C *foreſ.* &c. *was ſeiſed, as in the right of his Church foreſ. the day which he died, as is ſaid, and unles*, &c.

And the Rule in the Regiſter is; That in the ſame manner as is ſaid before of common of paſture, ſo may it be ſaid of all other Commons, as of Turbary, Piſcary, *&c.*

And there are divers other Writs of *Quod permittat* of a- M nother nature; as a man ſhall have *Quod permittat* againſt the Lord, to ſuffer his villeins to do ſuit to his Mill, *&c.* and [124] that accrueth by uſage and preſcription, and the Writ is; A *The K.* &c. *Command* A, *that juſtly and without delay he permit his villeins of* C, *to make ſuit to the mill of* B, &c. *in* E, *and unles*, &c. *and the foreſ.* B *ſhall thee*, &c. *then ſum.* &c.

If the Miller taketh Toll, then Treſpaſſeth: But if the Tenant of the Freehold take it, a *Quod permittat.* 41 E. 3. 24. & 44 E. 3. ac.

And another Writ: *Command* A *that he permit* B *to grinde his demean Corn of* N, *at the mill of him* A *in* N, *quit of multure, which at the ſame mill to grinde he ought and uſeth as he ſaith, and unleſs*, &c. Or, *Command* A, &c. *that he permit* B *to draw water, at the fountain of him* A *in* N, *as at that to draw he ought and uſeth, as he ſaith, and unles*, &c. Or, *That he permit* B *to water his flock, at the water of him* A *in* N, *as at that to water he ought and uſeth as he ſaith.* Or, *That he permit* B *to have his free Bull in* N, *as to have he ought and uſeth as he ſaith.* Or, *That he permit* B *to have a certain way over the Land of him* A *in* N, &c. Or, *That he permit* B *to have his free hold in his demean Lands in* L, *which to have he ought and uſeth.* Or, *That he permit to have free piſcary in the water of him* A *in* N. &c. Or, *That he permit to have free paſſage over the water of* Humber, *in the Ship of him* A, *which in it to have he ought, and uſeth as he ſaith*, &c. *and unles*, &c. *but a man ſhall not have a* Quod permittat *of reaſonable eſtovers in his wood, or of turbary, or of heath.*

vid. 1 E. 1. *Er.* Battaile 13. ſex. *Quod permittat.* 9. a *Quod permittat* brought of Eſtovers.

And the like by the Rule in the Regiſter, for in lieu thereof is given the Writ of Aſſiſe of Novel diſſeiſin by the Statute of *Weſt.* 2. *cap.* 26.

And a man ſhall have a Writ, *That he permit to erect ladders in the ſoil of him* B *in* L, *to the manſ. of him*, &c. *contiguous*

guous, his houſes there as oft as need ſhall be to cover and repair, as to erect he ought, and uſeth as is ſaid, and unles, &c.

And a man may have a Writ of *Quod permittat* of a Corodie; as, *Command* P *Prior,* &c. *that he permit* B, *to have ſuſtenance competent for himſelf and one lad, in victual and apparel, and all other neceſſaries, and for one horſe in meat every day, and in all ſuſtenance competent for four men of the comp. of the ſame* B; *four, lads, four horſes. four greyhounds, and four ſparhawkes, every year, at the Feaſts of the Nativ. of our Lord, Eaſt. Whitſ. and of all Saints, and by three daies after every of the Feaſts foreſ. in the Priory of* C, &c. *of which* E *ſometime Prior of the Place foreſ. unjuſtly,* &c. *diſſ.* F *the father of the foreſ.* B, *whoſe heir he is, after the firſt paſſage,* &c.

And in *Quod permittat habere chiminum,* in the nature of a Writ of Right, and to hold ſuit, and dereigne the warrant, &c. and the defendant came and joyned the nuſe upon the meer right, and was received. 30 E. 1. *Quod permittat.* 10.

B And in a *Quod permittat* by a Parſon, he counted *de ſee & droit,* and held ſuit, and dereigne, &c. and the Tenant came and gaged battail, &c. *tempore Regis* E. 1. Er. Battaile 13.

And Tenant in Tayle ſhall have a *Quod permittat.* 4 E. 3. 48.

C And in a *Quod permittat* of a Common the Tenant alledged the darrein ſeiſin in the Plaintiff, and it was adjudged a good plea to abate the Writ. But there the Plaintiffe counted of the ſeiſin of his Anceſtor; For a man ſhall have a *Quod permittat* of his own ſeiſin, as it ſeemeth. *Quod permittat* 7.

D *And that he permit him to reduce the courſe of water,* &c. which is miſturned, will well lye. 2 H. 4. 13. ac.

E And a man ſhall have a *Quod permittat* againſt the Tenant of the Freehold for an act done, or a diſturbance done by a ſtranger who was not Tenant of the ſoil.

F And the Proceſs in a *Quod permittat* is Summons, Attachment and Diſtreſs: And if the Sheriff at the Summons return *Nihil,* the Plaintiff may pray a *Capias* and have it, *qd. vid. H.* 39. *E.* 2. 30 E. 3. 3.

G And the form of the Count in a *Quod permittat* appears in the book of Entries *fol.* 80. on the firſt ſide.

H And if a man build a houſe, or a wall, or other thing which is a Nuſance unto the Freehold of another, and dieth: he to whoſe Nuſance it is ſhall have a Writ of *Quod permittat* againſt his heir that did the Nuſance, and the Writ is ſuch:

The

The K. to the Sher. &c. *command* A, *that juſtly*, &c. *he permit* B *to caſt down a certain houſe, or a certain wall, or a certain hedge, or a certain mill or ditch which*, &c. R *father or other Anceſtor of the foreſ.* A, *whoſe heir he is, injuſtly and without judgement levied to the Nuſance of the frank-tenement of* C *the Father, or other Anceſtor of the foreſ.* A, *whoſe Heir he is in the ſame Town, or in another, after the firſt paſſage*, &c. *as is ſaid; and unleſſe he ſhall do it*, &c. Or thus; *That he permit* B *to exalt or deexalt a certain pool in it, which the foreſ.* A *injuſtly hath raiſed or deexalted, to the Nuſance of his frank-tenement, or of* C *the Father of the foreſ.* B, &c. Or thus: *That juſtly he permit* B *to reduce the courſe of a certain water in* L *to its right and ancient courſe, which* C *the mother of the foreſ.* A, *whoſe Heir he is, diverted*, &c. Or thus: *That juſtly*, &c. *he permit* B *to open a certain way in* N *which* C *the Father of the foreſ.* A *whoſe Heir he is, injuſtly* * *ſtopped up*, &c.

* In both places *obſtruere* in the original.

And if a man levy a Nuſance unto the Freehold of another, and he to whom the Nuſance is done maketh a Feoffment in fee of the Land; and he who did the Nuſance maketh a Feoffment of the Land in which the Nuſance is; yet there is a Writ in the Regiſter for the Feoffee of him to whom the Nuſance was levied, againſt the Feoffee of the other, to reform that Nuſance; and the Writ is ſuch: *The K.* &c. *command* A *that juſtly*, &c. *he permit* B *to widen a certain way in* N *which injuſtly and without judgement ſtraitned*, &c. But this Writ is not given by the Statute, but may ſue, *&c.* by the Statute, *Weſt. 2. in Caſu Conſimili*, &c. *cap.* 24.

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Or Bailiwick 34 E. 1. Br. Demand. 43.

And a *Quod permittat* of a Fair or Market ſhall be ſued in A the Common Pleas; and the Writ is ſuch:

The K. to the Sher. &c. *If* A *ſhall*, &c. *then ſum.* B, &c. *that he be before our Juſtic. why he ſet up a certain Market, or a certain Fair in* J *the Nuſance of the free Market, or free Fair, of him* A *in the ſame Town or in another, after the firſt paſſage*, &c. *as he ſaith, and have there the ſum.* &c.

And the like Writ for the Heir where the Father doth levy the Market or Fair unto the Nuſance of another Fair or Market; or for the Heir againſt him who levieth the Nuſance, *&c.*

Writ

Writ de Admenſuratione Paſturæ.

B THe Writ of Admeaſurement of paſture lieth betwixt Commoners who have common appendant to their Freeholds, if one of them ſurchage the Common by putting in more Cattel in the Common then he ought to have Common for there, then that Commoner who is grieved ſhall have this Writ of admeaſurement of paſture; and By this ſuit all the Commoners ſhall be admeaſured, as well thoſe who have not ſurcharged the Common, as he who hath ſurcharged it, and he who bringeth the Action ſhall be alſo admeaſured. 8 H. 6. 26.

C And the Writ is *Vicontiel*, and ſhall be directed unto the Sheriff, and ſhall not be returnable; and the form of the Writ is ſuch: View in his Action. 3 H. 26. Vouche alſo 32 E. 3 Voucher 19.

The K. to the Sher. &c. Plained hath to us A *that* B *and* C *his wife have injuſtly ſurcharged their Common of paſture in* N, *ſo that in it more beaſts and cattel they have then to have they ought, and to them belongeth to have, and therefore thee we command that juſtly and without delay to be admeaſured thou cauſe that paſture, ſo that the foreſ.* B *and* C *may not have in it more beaſts and cattel then to have they ought, and to them it belongeth to have, according to the frank-tenement they have in the ſame Town, and that the ſame* A *may have in that paſture, ſo many beaſts and cattel, as to have he ought, and to him it belongeth to have, that no more therefore a clamour we may hear for default of Juſtice, &c.* Note, this Writ is vicontiel, and the Suters are the Judges by 7 E. 4. 23

D And if the Tenant ſurcharge the Common with his cattel, *&c.* the Lord ſhall not have the Writ of admeaſurement againſt the Tenant; but it ſeemeth the Lord may diſtreyn the ſurpluſage of the cattel damage feaſant. And ſome ſay, That the Lord may have an Aſſiſe againſt the Tenant for the ſurcharge, for that he is diſturbed of the profit of his Land. *quære* of theſe Caſes. 18 E. 3. admeaſurement 7. a notable caſe.

But if the Lord ſurcharge the Common, the Tenant ſhall not have a Writ of admeaſurement againſt the Lord, but he ſhall have an Aſſiſe of Common againſt the Lord. 18 E. 3. 20.

And ſo if the Lord do make approvement of the Common unto himſelf, and do not leave ſufficient Common to the Tenant, the Tenant ſhall have an Aſſiſe, and not a Writ of admeaſurement. And he who hath Common ap- *See* 179. E. 126. D. E.

per-

pertenant certain, or Common by grant certain, ſhall be admeaſured; And a Tenant ſhall have an admeaſurement againſt him; But he who hath a Common appertenant without number, or Common in groſſe without number, ſhall not be ſtinted, nor a Writ of admeaſurement doth not lie againſt him.

And in the time of *E.* 1. it was agreed, That one neighbour ſhall have a Writ of admeaſurement againſt another where they entercommon, by reaſon of neighbourhood. E

And if the Sheriff will not make the admeaſurement, he ſhall have an *Alias* and *Pluries*, *vel cauſam Nobis ſignifices.* And if he do not return the *Pluries*, he ſhall have attachment againſt the Sheriff. And the plea may be removed out of the County by a *Pone* at the ſuit of the Plaintiff without ſhewing cauſe in the Writ, but at the ſuit of the Def. he ought to ſhew cauſe in the Writ. And the Writ of *Pone* is ſuch: F

Put at the ſuit of the Plaint. before our Juſtic. &c. ſuch day the plea which is in thy County by our Writ, betwixt A and B of Com. of Paſture in N to be admeaſured. and ſum. &c. the foreſ. B, that then he be there the foreſ A thereupon to anſwer, &c. and have, &c. and this Writ and another Writ.

And upon this Writ of admeaſurement, the Plaintiff ſhall enter his plaint in the County before the Sheriff, as he ſhall do in a Replevin ſued by Writ, and upon that the Sheriff ſhall make a Warrant againſt the Defendant, *&c.* and warn him to appear; and if he come and plead nothing in barre, or grants it, then the Sheriff ſhall make the admeaſurement. G

7 E. 4. 22. *Dauby.*

In a Writ of admeaſurement brought againſt one of Common in *D*, the Defendant ſaid that he had Lands in *B* and *S*, to which he had Common in the ſaid place; and yet the Writ good, for it is holden there that the ouſter of the ſurcharge ſhall not be but in the ſame place only, yet it ſeemeth all the Common ſhall be admeaſured. Temp. *E.* 1. *Admeaſ.* 15.

But if the Defendant ſhew cauſe unto the Sheriff wherefore the admeaſurement ſhould not be made, then the Sheriff ought not to make admeaſurement upon this Writ; but the Plaintiff ought to remove the plea by a *Pone* into the Common Pleas, by which *Pone* the Defendant ſhall have day for to appear, *&c.* And if he appear not, then ſhall iſſue a *Diſtringas* directed to the Sheriff to diſtreyn the party,

and

and ſuch day ſhall be given by that Writ, that two Counties may be kept between the date of the Writ and the return, and in the Counties Proclamation ſhall be made, that he come and ſhew cauſe why the admeaſurement ſhould not be made. And if he do not come at the return of the *Diſtringas*, then a Writ ſhall be awarded unto the Sheriff to make the admeaſurement by his default; and that is given by the Statute of *Weſt* 2. cap. 8. and the Writ is ſuch:

H *The K. to the Sher. &c. Whereas* A *lately to us hath plained that* B *and* C *injuſtly have ſurcharged his Common of Paſture in* N. *ſo that in it more beaſts and cattell they have then to have they ought, and to them belongs to have, by which thee we command that juſtly, and without delay to be admeaſured thou cauſe that paſture, ſo that the foreſ.* A *and* C *may not have in it more beaſts and cattell then to have they ought, and to thoſe belong to have accord. to their frank-tenement in the ſame Town; And that the foreſ.* A *may have in that paſture, ſo many beaſts and cattel, as to have he ought, and to him belongeth to have, &c. that no more, &c. And thou nothing thereupon haſt done, as* [126] *from the plaint of him we have received; and whereas in our Writ of admeaſurement of paſture we appointed that after the grand diſtreſs dayes be given within which two Coun. may be held, at which it ſhould be proclaimed, that the Def. come the actor to anſwer, at which day if he ſhould not come, admeaſurement ſhould be made by default. Thee we command, as other times we command, that juſtly and without delay to be admeaſured thou cauſe the paſture be foreſ. accord. to the tenor of another our Writ to thee, thereupon directed, and accord. to form of our Statute thereupon provided, and ſet forth, that we by the foreſ.* A *need not hereupon again be ſollicited. Witneſſe, &c.*

A And when the plea is removed by Pone in the Common pleas, and the Plaintiff appears, and the Defendant, then the plain. ſhall count againſt the defendant, and ſee the form of the count in the book of Entries, *fol.* 128.

B And if the Defendant do grant to have the admeaſurement, a Writ ſhall iſſue out to the Sheriff to make admeaſurement, which ſhall be ſuch:

The K. to the Sher. &c. We command thee that taking with thee 12, *&c. by whom, &c. whom, &c. in thy proper perſon thou go the Com. of paſture, to meaſure and by their oath admeaſured thou cauſe the common of paſture foreſ. ſo that the foreſ.* S *and* C *def. have not more, &c. and to them belongeth to have*

accord.

accord. to their frank-tenement which they have in the ſame Town, and that the foreſ. R may have in that paſture ſo many beaſts and cattel, as to him he ought, and to him belongeth to have, accord. to his frank-tenement in the ſame Town, and the admeaſurement which &c. warn before our Juſtic. &c. under thy Seal, and the Seals of them, &c.

After the *Pone* returned to remove the plea out of the County, if the Defendant make default at the day of the Return of the Writ, then ſhall iſſue a Writ to the Sheriff to diſtreyn the Defendant, and in the Writ ſhall be contained that he make open Proclamation in two Counties, *&c.* that the Defendant come into the Common Pleas at the day of the Return of the *Diſtringas* to anſwer to the Plaintiff, *&c.* And if the Sheriff return the Writ ſerved; and the Defendant doth not come, then ſhall iſſue a Writ to the Sheriff to make the admeaſurement. C

See 125. D. And it appeareth by the Book of Entries, *fol.* 128. That a Writ of admeaſurement doth not lie againſt the Lord of the Soil. D

18 E. 3. 20. Admeaſurement 7. ac. and there holden that it lieth not againſt the Feoffee of the Lord of part of the demeſne, ſo that the Feoffee in the ſame degree as the Lord himſelf. 8 E. 2 Admeaſurement 14 in Admeaſurement of Paſture the Defendant ſaid that he Demandant ſend the Writ had ejected him of the Common, and no plea, for notwithſtanding that he held not the Common, he held the Land for which the Common is ſurcharged. And if a man be once admeaſured by a Writ of admeaſurement directed unto the Sheriff by the Sheriff, *&c.* and afterwards he ſurchargeth the Common again, then the party who ſued the firſt Writ, ſhall have a Writ to the Sheriff, called a Writ *De Secunda Superoneratione:* and the Writ is ſuch: E

The K. &c. *hath ſhown us* A. *that whereas he our Writ lately to thee brought of Common of Paſture in* N *to be admeaſur. which* B *injuſtly ſurcharged. and thou that Paſture by our precept, as the manner is in our Realm, didſt admeaſ.* &c. *the ſame* B *that Paſture after the admeaſ. foreſ. again injuſtly ſurcharg to the no ſmall loſs and grievance of him* A. *and againſt the form of our Stat. upon this provid. And becauſe the ſame, accord. to form of the ſame Statute help we will, as we are held we command thee that thou in thy proper perſon go to that paſture, and by the oath of honeſt and legal men of thy Bail by whom the truth of the matter better known may be, of the ſecond ſurcharg of the ſame Paſture diligently enquire thou, and if by that inqueſt the*

the Paſture after the admeaſurement again injuſtly ſurcharg. thou findeſt, then of theſe beaſts in that Paſture beyond the due number after the firſt admeaſ. put, or of the price of them, to us anſwer at the Exchequ. and the ſurcharg. amove aboveſaid. Witneſs, &c.

F And it appeareth by this Writ, that a man ſhall have a Writ *De Supercroneratione* upon the firſt Writ of admeaſurement of Paſture which is *vicontiel*, and directed to the Sheriff; if the Sheriff make admeaſurement upon that Writ, and afterwards the Defendants ſurcharge the Common again, as well as upon a Writ of admeaſurement awarded out of the Common Pleas upon a Judgement there given, *&c.* But upon the Writ of admeaſurement awarded to the Sheriff, by which he maketh admeaſurement, if the Defendant ſurcharge the Common after, the Writ of *Secunda Superoneratione* ſhall be awarded out of the Chancery: But upon a Judgement given in the Common Pleas of admeaſurement, *&c.* If the Defendant ſurcharge the Common, the Writ of *Secunda Superoneratione* ſhall be awarded out of the Common Pleas. And the form of the Count in a Writ of admeaſurement is ſuch: 7 E. 4. 22.

G *And whence the foreſ. Pl. plaineth, that whereas he ſeiſ. is of one meſ. with the appurten. in* S, *to which the ſame Plaintiff hath, and to have ought, Common of Paſture with four horſes,* &c. *in one hund. acres of paſt. called* B, *every year by the whole year appurten. and the foreſ. Def. ſeiſ. is, in his demean, as of fee, of four yard lands with the appurten. in the ſame Town, to which the ſame Def. hath, and to have ought, Common of Paſture with one hund. horſes, and* 20 *Oxen,* &c. *every year by the whole year, the foreſ. Defendant injuſtly hath ſurcharged the Common of Puſture foreſ. called* B, *ſo that in it more beaſts he hath, and cattel, then to have he ought, and to him belongeth to have, wherefore he ſaith, that he is deterior, and damage hath to* 20^{lb}, *and he demandeth admeaſurement,* &c.

H And by the Writ of *Secunda Superoneratione* the Plaintiff ſhall recover his damages againſt him that was Defendant in the firſt Writ, and alſo he ſhall forfeit unto the King the Cattel which he put in over the due number after the admeaſurement made. And all that is by the Statute of *Weſt.* 2. 1.

I And note, That by the Writ of admeaſurement all the Commoners ſhall be admeaſured as well as thoſe who were parties to the Writ. But yet if any of thoſe who are Com- 8 H. 6. 26.

moners which were not parties to the Writ of admeasurement, *&c.* do surcharge the Common after Admeasurement, they shall not forfeit their cattel, nor the value of them that were in the Pasture above the due number, because they were not parties to the first Writ, nor the party shall not recover damages against them for his surcharge in this Writ.

[127] For the Writ of *Secunda Superoneratione* doth not lie but only against him, against whom the first Writ was sued forth.

Writ de Reparatione facienda.

THe Writ *de Reparatione facienda* lieth in divers cases, A one is, where there are three Tenants in Common or joynt-tenants, or *pro diviso* of a Mill, or of a House, *&c.* which fals to decay, and one will repair, but the others will not repair the same, he shall have this Writ against them; and the Writ is such:

The K. to the Sher &c. If A shall, &c. then sum, &c. B B *and C, that they be, &c. to shew why, whereas the same* A, B *and C. a certain mill in* N *for undivided hold, and they the issues thence pervenient by equal portions thence take, and to reparat. and sustentat. of the same mill are bound, and the same* B *and C. although the portion of those issues, them conting. they take, to the reparat. notwithstand. and sustentat. of the forest. to contribute refuse, to the no small damage of him* A, *and grievance as he saith, and have there the sum. &c.* And so if a man have C a house adjoyning to my house, and he suffer his house to lie in decay to the annoyance of my house, I shall have a Writ against him to repair his house in such form.

Command A, *&c. that, &c. to be repaired he cause a certain house in* N, *which threat. falling, to the Nusance of the frank-tenement of* B *in the same Town, which to repair he ought, and useth, as he saith, &c. and unless, &c.*

And so if I have a passage over a Bridge, and another D ought to repair the Bridge, and he suffer the same to fall to decay, I shall have Writ against him in this form.

The K. &c. command A, *that, &c. to be repaired he cause, together with* B *and* C *his coparceners a bridge, or certain pool in* N *which with them to repair he ought as he said, and unless, &c.* Or thus, *a cert. or a certain pool which fals down, or broken up is, to the Nusance of the frank-tenement of* B *in the same Town,*

Town, or which to make he ought, and uſeth, &c. as he ſaith. Or thus: *To be repair. he cauſe, together with* B *and* C *his parceners, the ditches and walls in* N; *which are thrown down, to the nuſance of the frank-tenement of* B *and* C *which with them to repair he ought, and uſeth, as they ſay, &c.*

E And if any Bridge or Wall, or Sewer be broken, unto the annoyance of the Countrey, upon a ſurmiſe made by any perſon thereof in the Chancery that certain perſons ought to repair the ſame, he ſhall have a Writ unto the Sheriff to diſtreyn ſuch perſons, to repair the ſame. But it appeareth by the Regiſter, That the King ſhall ſend his Commiſſion to the Sheriff, to enquire who ought to make ſuch Bridge; and that he diſtreyn to make the ſame, and repair it. But by the Statute of 28 *E.* 3. *cap.* 9. A Commiſſion ſhall not be made unto the Sheriff to take an Indictment: and the King may ſend unto the Sheriff to diſtreyn thoſe perſons who ought to make or repair ſuch a way, or cauſey, or pavement, and upon it an *Alias* and a *Pluries*, if it be not done, and an attachment upon the ſame; And if the bridge or way be in the Confines of the County, he ſhall have ſeverall Writs unto every Sheriff to diſtreyn them in their Bailiwicks, that they with the men in the other Counties ſhall make and repair the bridges and wayes *&c.*

F And there is another Writ in the Regiſter in the title of the Writ of *Ex gravi querela*, thus:

The K. *to the Major and Sher. of* A *greet. of the party of* W *to us is ſhown, That whereas he hath a certain cellar with the appurten. in the ſame Town above the cellar foreſ. thrown down, and broken to the Nuſance of the cellar of him* W, *and by the foreſ.* L *accord. to Cuſtom. of the Town foreſ. to be repaired it ought, yet the ſame* L *that cellar to repair refuſeth, as he ſaith, to the grievous dam. of him* W, *and againſt the cuſt. foreſ. and becauſe we will not that the ſame* W *be injured in this part, we command you that having called before you the parties and heard ſeverally their reaſons to the ſame* W *in the premiſes to be done, you cauſe due and ſpeedy compliſhment of Juſtice accord. to cuſt. &c.*

And thereupon the Major and Sheriffs, or Bailies ſhall proceed, and award proceſs againſt the parties; and if they will not do it, he may have an *Alias* and a *Pluries*, and attachment againſt the Major and Bailiffs.

Writ de Curia claudenda, and for repairing of Hedges.

11 R. 2. *Curia claudenda* 5. L 5. E. 4. 100 it ought to be in the *Debet* and *Solet*, and yet Tenant for life shall have the *Writ*.

THe Writ of *Curia claudenda* may be sued before the Sheriff in the County, and then the Writ is such: G

The King to the Sher. &c. *Justice* A, *that justly*, &c. *he close his ground in* N, *which open is to the Nusance of the frank-tenement of* B *in the same Town, or in another Town, which to close he ought, and useth, as he saith, as reasonably shew he can, that that to close he ought, that no more*, &c.

2 H. 4. 11.

And this Writ lieth where one ought for to enclose his H Land from his Neighbour, and will not do it, he shall have this Writ; and the Writ may be sued in the Common Pleas, and then the Writ is such:

L. 5. E. 4. 118, 119. a man shall have this *Writ* before he be damnified, *Quia tunc.* 27 H. 6. *Curia claudenda*: a Nontenure is a good plea in this *Writ*.

The K. &c. *command* A, *that justly*, &c. *he close his ground* I *in* N, *which is open, to the Nusance of the frank-tenement of* B, &c. *to there, he ought and useth, and unless*, &c.

16 H. 7. 9. Per Fineux the judgement is to recover the Inclosure and damages.

And this Writ may be removed out of the County at the suit of the Plaintiff without cause, and at the suit of the Defendant he ought to shew cause in the Writ, and in the end of the Writ shall be this clause, *Let Execution of this Writ be*, &c. *If the cause be true, otherwise not.*

[128]

22 H. 6. 7. 8. 22 E. 4. *Curia claudenda.* 36 H. 6. 1b. ac. 13 R. 2. *Cur. claudenda* 3. 12 H. 8. 2. 24 E. 3. 4. 15 H. 7. 13. 5. 7. 2. 22 H. 6. 9.

And the *Curia claudenda* doth not lie but against him who A hath a Close adjoyning unto the Plaintiffs Land, and it doth not lie but for him who hath a Freehold in the Land, for Tenant for years shall not have this Writ, and the view lieth in this Writ.

But it seemeth, That if a man have common in a great B waste to him and his heirs, or for life, and he who hath the C Land adjoyning unto the waste and soil, and who ought to enclose, enter into the waste and will not make his inclosure, yet the Commoner shall not have this Action for the damages which he susteyneth, *&c.* although the Commoner may distreyn the Catte! damage feasance in the Land, which is his Common, for the Writ doth suppose *Ad Nocumentum liberi tenementi* of the Plaintiff, which proveth that the Plaintiff ought to have the soil adjoyning, if he have the Action.

And

D And the proceſs in this Writ is Summons, Attachment and diſtreſs; and if he do appear and afterwards make default he ſhall have a *Diſtringas* in the place of a *Petit Cape*, *&c.* And if he make default at the day of the return of that Writ, he ſhall have a Writ to enquire of Damages, and alſo

E a Writ to diſtreyn him to make the reparations, *&c.* And in this Writ in his Count he ought to ſhew the certainty of the Land which the Plaintiff hath adjoyning unto the Defendant, and the certainty of the Land, which the Defendant hath there adjoyning, which he ought to incloſe. And to alledge a preſcription of the Incloſure, *&c.* as appeareth in the Count in the Book of Entries, *fol.* 32. So is it holden 22 *H.* 6. 8. for if it be by Indenture or Compoſition, then he ſhall be put to his Writ of Covenant.

22 E. 4. Iſſue. 127. 10 E. 4. 7. 13 R. 2. Cur clauſ. 3.

29 H. 6. 38. Dy.

Writ of Quo Jure.

F THe Writ of *Quo Jure* lieth, where a man hath Lands in Fee, and another claimeth Common in that Land, then he who oweth the Land ſhall have this Writ againſt that Commoner who claimeth the Common, and the form of the Writ is ſuch:

7 H. 4. 12. it is a good plea to ſay that he hath nothing in the Lands in which he claimeth Common.

G *The K. to the Sher.* &c. *If A ſhall,* &c. *then ſum.* &c. B, *that he be,* &c. *to ſhow by what right he exacts Common of paſture in the Land of him* A, *foraſmuch as the ſame* A *hath no Common in the Land of him* B, *nor the ſame* B *ſervice to him doth, why common in the Land of him* A, *to have he ought, as he ſaith, and have there,* &c.

H And this Writ lyeth for the Lord of a Town or of a waſt, or for any other Tenant who claimeth Common in his Land, although he be not Lord of the waſt, nor the Town.

I And this Writ is a Writ of Right in its nature, for when the Plaintiff hath declared in this Writ, the Tenant ſhall make defence and his title to the Common, and alledge ſeiſin thereof, and the Explees, *Et quod tale ſit jus ſum. offert,* &c. as the Demandant ſhall do in a Writ of Right, and then the Plaintiff in the *Quo Jure* ſhall make defence, and deny the ſeiſin alledged by the Defendant, and joyn the Nuſe upon the meer Right, or by Battail, and ſee the Count and the form of pleading in a *Quo jure, Lib. Dent.* 96. and 80.

K And in a *Quo jure* brought by two, Summons and Sever-

ance lieth, and the Nonsuit of the one shall not be the Nonsuit of the other. And this *quæ jure* lieth against several Tenants, as it appeareth, *H.*14. *H.*3. But in that case they shall, it seemeth, make several Defences, and make several Titles, and joyn the *Mise* severally. And the view shall be L granted in this Writ. And the process in this Writ is Summons, Attachment and Distress, and after appearance if the Defendant make default, a grand Distress shall issue out in the place of *Petit Cape*, &c.

Writ de Rationabilibus Divisis.

THe Writ *de Rationabilibus Divisis*, is in its nature a Writ M of Right. And lyeth properly where two men have Lands in divers Towns or Hamlets, so that the one is seised of the Land in one Town or Hamlet, and the other of the Land in the other Town and Hamlet by himself; and they do not know the Bounds of the Towns or Hamlets, which is the Land of one, and which is the Land of the other; Then to set the Bounds in certain, this Writ lieth for the one against the other; and the form of the Writ is such:

The K. to the Sher. &c. *We command thee that justly and* N *without delay thou cause to be made reasonable divisions betwixt the Land of* A *of* B *in* C, *and* D *of* E *in* F, *as to be they ought, and have used, whereupon the same* A *plaineth that the foresaid* D *more thereof encroacheth to his fee, then to him belongeth to have, that no more*, &c. *Witness*, &c.

And this Writ lieth for Tenant in Fee-simple, and against O Tenant for life, and in this Writ the Tenant for life shall have aid of him in the Reversion, and they may joyn the mise in this Writ, and it shall be tried by the grand Assise, as other Writs of Right shall be.

And this Writ is Vicontiel, and may be determined by P the Sheriff; For the Plaintiff in this Writ shall make his plaint before the Sheriff, in nature of a Count, and upon the same the Sheriff shall make a Precept to warn the Defendant. And when he cometh the Plaintiff shall count, and the Defendant shall answer the same in the County, &c. and if he deny it, then the Sheriff shall make the division and partition of the Land between them by certain mears and bounds.

Q But if the Defendant will plead and joyn the mise upon the meer Right and put himself on the grand Assise, then the Plaintiff ought to remove the same by a *Pone*, without cause, and the Defendant may remove it with cause, as it is said in other Writs. And the Count in this Writ is in this form:

R *And the same A now cometh and saith, That whereas reasonable and right divise to be ought betwixt the Land of the forest. N, &c. in S. and the Land of him A. in B. the divis. forest. begin. toward the North in a certain place called K. and so directly toward the South in length by &c. to B beyond which divise the forest. N &c. nothing to have ought towards the West. the same N &c. beyond the said forest. hath encroched to his fee in S, of the Land of him A. three hund. acres of more and pasture, &c. whereof the same A saith, that a certain W. lately his father, was seis. in his demean as of fee by divers metes and bounds, in time of peace in the time, &c. by taking thereof the explees, &c. to the val. and that such a his right he offereth, &c.* And the Tenant may joyn the Mise by battail or by grand Assise, *&c.* [129]

A And divers Tenants in common of a Town or Hamlet may have this action against him who is Tenant of another Town adjoining, and they shall Count one Count, and shall make their several titles in that Count, and shall alledge the explees severally in the same Count, Which see in the book of Entries, *fol.* 127.

B And the defendant shall make his defence severall against every one of them, or may wage Battail or joyn the Mise at his pleasure, and then the plaintiffs shall reply thereunto and recite anew their Count, and alledge the Explees, as before, and then to joyn the Mise with the Tenant upon the meer Right, or by Battail at the pleasure of the Tenant. And if they do joyn the Mise in the County before the Sheriff by Battail, it shall be determined there, but not by the grand

C Assise *&c.* And it seemeth, that Tenant in tail nor a Parson of a Church, nor Tenant for life shall not have this Writ, for he ought to have an Estate in fee who maintaineth this Writ, and summons and severance lieth in this Writ, and the

D view shall be granted in this Writ. And joyntenancy or Co-

E parcenary is a good plea in this Writ, and the Writ may be brought against several Tenants, who have tenements in severalty or in common in the other Town, *&c.*

Writ, Ex parte talis.

THe Writ of *Ex parte talis* lieth where Auditors are assigned unto a Baily or Receivor to accompt, and the Auditors will not allow unto the Baily or Receivor his reasonable allowances, which they ought to do, but commit him to prison; he who is so imprisoned shall have this Writ *Ex parte talis*, &c. But if a man bring a Writ of accompt and Auditors are assigned unto him who is Baily or Receivor to take his accompt, and they will not allow him his allowances which they ought to do, *&c.* he shall not have this Writ of *Ex parte talis*, nor any other remedy in that case, for he may shew the same to the Justices, and they shall relieve him.

Note, 13 R. 2. Fitz. Accompt 51. upon this Writ of *Ex parte talis*, the Barons of the Exchequer use to allow an Averm. that the plaintiff in the *Writ* hath paid the money by the commandment of the owner, or such special matter, without writing or Tally of the same.

And if a plea of accompt be sued in *London* against a Receivor, *&c.* or in other Court of Record, and the party appear, and Auditors are assigned him by the Court, and they will not allow unto him such allowances which he thinketh they ought to do; he shall have a Writ of *Ex parte talis*, and the Writ is such:

The K. &c. of the part of A *taken, and detained in our prison of* Lincoln *for arrearages of his account, in which* B *affirms him to be to him held for the time which he was his Baily in* N *to us is shown, that the Auditors of the account foresaid by him* B *to this deputed, him* A *upon the same account unduly have grieved, charging him with receipts which he hath not received, or not allowing him his expenses and disbursments reasonable, to the no small dammage and grievance of him* A, *and because we will not that the same* A *be injured in this part, thee we command, that if the foresaid* A *by testim. of the Auditors of account deliver. be, and shall finde thee sufficient mainpern. him who shall mainpr. to have before the Treasurer, and our Barons in our Exchequer, to make to the foresaid* B *his account, accord. to form of the Stat. of the common Councel of our Realm therefore provid. then him* A *from the prison if on that occasion, and no other he be detained in the same, to be delivered thou cause by the mainprise above said. and make to know the foresaid* B *that then he be there with the rolls, and tallies by which the foresaid* A *his account made, to do and receive in the premises, what of right and accord. to form of the Stat. foresaid. thereupon shall be to be done, and have there the names of those mainpernors, and this*

this Writ. Witneſſe, &c. See Stat. *Weſt.* 2. *cap.* 11.

H And this Writ ſhall be returnable before the Treaſurer and Barons of the Exchequer at a certain day, as it appeareth by the Writ.

I And if a man have Auditors aſſigned him in *London* by the party who taketh the accompt, and will not allow his tallies or other things to be allowed, but commit him to priſon, and becauſe he is a ſtranger in the City he cannot finde ſureties to bail him to ſue his Writ of *Ex parte talis*, &c. Then he may ſend unto the Chancellor, and ſurmiſe in the Chancery and put in ſureties before the King there, and thereupon he ſhall have a Writ unto the Sheriff of *London* out of the Chancery, rehearſing the matter, and how that he hath found ſureties there, according to the Statute, commanding the Sheriff to deliver him out of priſon, and the Writ ſhall be ſuch:

The K. to the Sher. of Lond. &c. *of the part of* A (*as above to there*) *no ſmal*, &c. *and grievance, and becauſe the ſame* A *a forreiner is in our City of* Lond. *and unknown, wherefore mainpern of the ſame City finde he cannot, to have him before our Treaſurer, and Barons of the Exchequer, to make his account foreſ. and to do farther, and receive what our Court ſhall conſid. in the premiſes, and you other mainpernors then of the City from the ſame* A *to admit have refuſed, and the ſame* A *ſufficient mainpernors before us in our Chanc. hath found*, viz. E, D, *and* E. *of the County of* York, *who him have mainpriſed to have before the Treaſurer, or his Lieutenant, and our Barons of the Exchequer in the quind. of Eaſt. next to come, to recite there his account foreſ. and to ſtand to the right in the premiſes, accord. to form of the Stat. of the com. Councel of our Realm* [130] *therefore provided. that him* A *from the priſon foreſ. if on that occaſion, and no other he be detained in the ſame, in the mean time to be delivered thou cauſe by the mainpern. abovеſ. and warn the foreſ.* B *that then he be*, &c. *by whom the foreſ.* A *his account before made aboveſ. and to do and receive, what juſt ſhall be, and conſonant to reaſon, and have there this Writ*, &c.

A And if he do remain in priſon, he may ſue the *Ex parte talis* returnable before the Treaſurer and Barons of the *Exchequer*, and thereupon he may have another Writ out of the Chancery directed unto the Treaſurer and Barons of the *Exchequer*, that they take ſuretie of him who is in priſon

accom-

according unto the form of the Statute; and that they deliver him out of prison, and shall have another Writ unto the Gaoler, that he send his body before the Treasurer and Barons of the Exchequer, and that he deliver the body when the Treasurer and Barons send him a Writ so to do, &c. which Writ appeareth in the Register.

And if a man be committed to prison by Auditors for arrearages of his accompt, and afterwards escape out of prison, the Gaoler shall satisfie the party at whose suit he was committed, and the Gaoler shall have a speciall action upon the Case against the prisoner to answer the escape and the damages which the Gaoler hath sustained, which Writ is among the Writs of *Ex parte talis* in the Register; But it seems reasonable that the Gaoler may take the party again, and so is the opinion of some Books.

vid. 6 H. 7. 11, & 12. 10 H. 7. 25. 13 E. 4. 9. 14 H. 7. 1.

Writ de Executione super Statutum Mercatorum.

A Writ of Execution upon a Statute Merchant lieth in Case, where a man is bounden in a Statute Merchant before any Major or Baily of a Corporat Town, who have power to take such Bonds or Recognizances, to pay a certain sum of money at a day, at which day he doth not pay the same, then he to whom the Obligation or Recognisance is made, may come before the Major, or him before whom the Bond or Recognisance was taken, and pray him to certifie the same into the Chancery under his seal according unto the Statute of Acton Burnel, and if he will not certifie the same as he ought to do, then the Recognisee may have such Writ directed unto the Major:

But if a Statute be acknowledged to one who is absent it shall not binde the Commission if it be not delivered to the Commissee, as it seemeth by 20 E. 3. Fitz. Accomp. 79.

The K. to his beloved the Major of Linc. *and* T *Clerk, the recognis. of debts at* L *to receive deputed, yect. of the part of* L *to us is shown that whereas* R *the tenth year of our reign before* W *lately Major of our Town of* Linc. *and* H *now Clerk. such recogn. in the same Town to receive deput. knowledged himself to owe to the foresd.* L 24li *accord. to the form of the Statute lately at Acton Burnel for merchan. set forth, at certain terms to be paid, and although the terms of payment foresd. long since are elapsed, and the same* L *you often hath requested that us in our Chanc. of the recogn. foresd. accord. to form of the Stat. ye would certifie, and you notwithst. us in our Chanc. foresd. upon the re-*

cogn.

cogn. foref. hitherto to certifie have deferred, and yet defer, whereupon very much we wonder, you we command, that having ſearched the rols, of ſuch recogn. before the foref. W and H the year foref. made in the cuſtody &c. as is ſaid being, if you find the recogn. foref. in the form foref. made to have been, and the terms of payment foref. to have been elapſed. and we in our Chanc. not at another time thereupon certified to have been, then we in the ſame Chanc. upon the recogn. foref. diſtinctly, and openly accord. to the form of the Stat. foref. under the ſeal for recogn. of Merch. there deputed, certifie ye, that further hereupon to be done we may cauſe, what accord. to the form of the Stat. foref. ſhall be to be done

D And if he will not certifie by this Writ, he may ſue an *Alias* and a *Pluries* and Attachment againſt the Major and Clark, and it appeareth by this Writ, that if an Obligation be once certified in the Chancery, it ought not to be certified again without *Affidavit* made that execution was not ſued upon it; and then he ſhall have a ſpecial Writ unto the Major for it, for then it ſhall be taken a ſeverall Obligation upon every Certificate.

E And alſo it ought to be certified under the Seal of him who
F is deputed to ſeal the obligation. And if the Major do make his Certificate unto the Chancery, then the party ſhall have a Writ to execute the Statute thus:

The K. to the Sher. of Linc. *greet. Becauſe* A *of* B *before* C *and* D *Clerks the recogn. of debts at* L *to receive deputed.* Or thus, *Before* D *Major.* Or thus, *Before* L *lately Major of our City of* Linc. *and* F *Clerk, or then Clerk, the recogn. of debts at* L *to receiv. deput. knowledged himſelf to owe* E x. *pounds which to him he ought to have paid, at the feaſt.* &c. *the year,* &c. *and thoſe to him as yet hath not paid, as is ſaid, I hee we command, that the body of the foref. if I ay he be, thou take, and in our priſon ſafely to be kept thou cauſe until the ſame* E *of the debt foref. or the execut. of the teſtam. of the foref.* E *of the foref.* x. l. *fully he ſhall ſatisfie, and how this our precept hath been executed, to us make known, in the Octaves of* S^t. Hill. *whereſoever,* &c. *by thy letters ſealed, and have,* &c.

G And this Writ may be returned as well into the Common
H Pleas as Kings Bench. And if a man make a Statute Merchant of 100^l payable at divers daies, if he fail of payment at any of the ſaid dayes, the Recogniſee ſhall ſue execution [131]
at that day, and ſhall not ſtay his execution untill all the daies

daies are paſt, as he ſhall do of an Obligation.

Contrary in Covenant, or if he aſſent to pay, by 5 Mary. 32 H. 6. cont. 14 H. 8, 14. Brudenell.

If a man be bounden to pay 20l at divers daies, he ſhall A not have an action of Debt upon the bond, untill all the daies are paſt. But if he who is bounden in a Statute Merchant be Clark, or Abbot, &c. then the Writ of Execution is of another form, *viz.*

The K. &c. *becauſe* A *Parſon of the Church of* B *before*, &c. *We command thee that the foreſaid* 10lb *of the goods, and chattels of him* A *in thy bail. moveables, without delay to be levied, and the ſame* E *to have thou cauſe, and how this precept*, &c.

For a Clark ſhall not be arreſted by his body upon that Statute; and if proceſs be awarded to arreſt him by that Statute, he ſhall have a Writ unto the Sheriff, that he do not trouble or moleſt him, and if he have arreſted him for the ſame, that he deliver him, if he know no cauſe why he ſhould not enjoy the priviledge of a Clark: And in ſome ſuch Writ there is a proviſo put in the end of the Writ, thus: *Proviſo quod Prædict.* 10 *lib. de terris, bonis & catallis ipſius* A *ſi non levata fuer. juxta formam ſtatuti prædict. leventur, ut eſt juſtum*, &c. *Teſte*, &c.

If a man be bounden in a Statute Merchant in 20l, and B the Statute at the ſuit of the Recogniſee is certified in the Chancery, and afterwards he dieth, his Executors may have a ſpeciall Writ unto the Major, reciting the Certificate before them, commanding them to certifie the ſame again into the Chancery, and the Writ is ſuch:

I hath ſhown unto us L *and* W *execut. of the teſtam. of* L *of* B, *that whereas* R, &c. *as above to there, accord. to form of the Statute foreſ. ye would certifie, you notwithſt. becauſe that by the rolls you have found that our Chanc. upon the ſame recogniſ. another time was certif. any thing thereupon to do have not cared, and the foreſ. exec. before us in our Chanc. perſonally being affirmed, any execut. of the recogn. foreſ. in the life of him* L, *or after his death by virtue of the certific. thereupon in our Chanc. before made, in no manner to have been made, and us have ſupplicated, that for them in this part we would remedy provide: and becauſe the ſame execut. as far as juſtly we may, we would help, we command you that having ſearch. the rolls, ſuch recogn. concern. if you ſhall find that recogn. in the form foreſ. made to have been, and the terms of paiment to be paſt, as is ſaid, then us in our Chanc. upon the recogn. foreſ. diſtinctly and openly*

under

under the ſeals for the recogn. of the debts there deput. as the manner is, certifie ye, notwithſtanding our Chanc. before thereupon hath been certified. Witneſs, &c.

C But this Writ is not granted but upon Affidavit and oath made by the Executors in Chancery, or by him who would have that Execution.

Writ of Execution upon a Statute Staple.

D AND if a man be bounden before the Major of the Staple in a certain ſum, to pay at a certain day, *&c.* and he do not pay it according to the Statute; then he to whom the Obligation is made, ſhall come before the Major and ſhew him the Statute, and pray him to certifie it under the ſeal into the Chancery, as he ſhall do upon a Statute Merchant. Or the Major may award Execution if the party be dwelling within his juriſdiction, or have Land or goods there, *&c.* And if the Major will not certifie at the requeſt of the party, then he ſhall have a Writ out of the Chancery unto the Major to certifie the ſame, as he ſhall have upon a Statute Merchant ſhewed in Chancery; and upon the ſame an *Alias*, and a *Pluries*, and Attachment againſt the Major if need be; and when the Major hath certified the Statute under the Seal, then the Writ of Execution ſhall iſſue forth againſt the party, to arreſt him, and to extend his Lands, *&c.* and this Writ ſhall be alwaies returnable in the Chancery, and not in the Kings Bench nor Common Pleas, as the Writ which iſſueth forth to do execution upon a Statute Merchant, and the form of the Writ is ſuch;

vid. 45 E. 3. 22. Finchden. Execution ſhall be ſued firſt of the goods; and then of the lands. But 7 R. 2. *Execution* 46. the party hath his Election to take one or the other; and ſo is the uſe at this day.

The K. to the Sher. of Linc. *greet. Becauſe* R *of* W, *the twentieth day of Septemb. and year,* &c. *before* E *of* B, *Major of our Staple of* B, *the recogn. of debts in the ſame Staple to take deput. knowledged himſelf to owe* W *of* F *eight pound,* &c. *which him he ought to have paid in the feaſt,* &c. *then,* &c. *and them to him hath not yet paid, as is ſaid; Thee we command, that the body of the foreſ.* R, *if lay he be, to be taken, and in our priſon, untill the ſame* W *of the foreſ. debt fully he ſhall ſatisfie, ſafely to be kept, and all the Lands and Chattels of him* R *in thy Bailiwick, by the oath of honeſt and legal men, of the Bailiwick foreſ. by whom the truth of the thing, better known may be, accord.*

accord. to the true value of the same diligently to be extended and appriſed, and into our hand to be ſeiſed cauſe thou and thoſe to the foreſ. W, untill of his debt foreſ. ſhall be ſatisf. to be deliv. cauſe accord. to the form of the Ordinance thereupon made, and how this our Precept thou executeſt make us know, in the Chanc. the morrow of all Souls next to come, whereſoever then we ſhall be. by thy Letters ſealed, and have there this Writ, &c.

And by this Writ it appeareth that the Sheriff may arreſt the Conuſor, and extend and take his Lands, Goods and Chattels, and return the ſame extent in Chancery, *&c.* And thereupon the Conuſee may ſue a Writ unto the Sheriff out of the Chancery to deliver him the lands and goods to the [132] value of the Debt, which Writ is called *Liberate*, and is ſuch:

The K. to the Sher. &c. Whereas R of W, the twentieth day, &c to there, by thy Letters ſealed, and then thus: And thou to us haſt returned that the foreſ. R was not found in thy Bailiwick after our Writ to thee was delivered, but that thou haſt taken into our hand, all the Lands, and Tenements and Chattels of him R in thy ſaid Bail. and thoſe to be extended. and appriſed haſt cauſed, according to the tenor of our Writ foreſ. viz. two parts of one Meſſuage which are appriſed to five pounds. We command thee that to the ſame A, all the lands, Tenements and Chattels foreſ. by thee into our hand thus taken, if thoſe by the extent and appriſe. have he will, thou deliver to have accord. to the form of the Ordinance foreſ. untill he of the debt foreſ. ſhall be ſatisfied, and how this our Precept thou executeſt, to know cauſe us, in our Chanc. in the quind. of Eaſt. next to come, whereſoever we ſhall be, by thy Letters, &c. *and have,* &c.

And if a man be bounden before the Major of the Staple, A or in a Statute-Merchant before another Major, *&c.* and have no Lands but in *Durham*, or other County Palatine, Then upon the Certificate of the Statute made by the Major, *&c.* upon the Return of the Sheriff, that he hath not Lands nor Tenements within his Bailiwick, the party may ſurmiſe that he hath not any thing but in the County Palatine, *&c.* and pray that the Tenor of the Record may be ſent thither, 1 E. 4. 10, to have execution done, and upon that ſurmiſe he ſhall have

Writ to do Execution in a County Palatine.

THe King to the Venerable Father in Christ L *by the same grace Bishop of* Durham, *or to his Chanc. in the Bishoprick forel. greet.* &c. *By tenor of a certain Statute of the Staple made before* W *of* W, *lately Major of the Staple at West recognisances of debts in the same Staple to receive deput. of* XL *to* T *of* W *now deceased as is said. and* E *of* R *Citizen of* Lond. *by* Agnes *which was the w. if. of* H. *of* R, *of the Bishoprick of* Durham *lately knowledged, and by* N. B. *now Major of the said Staple into our Chanc. sent. We send to you in these presents inclosed, that having looked upon the tenor forel. further at the prosecution of* Katherine *which was the W ife of the forel.* T, I, F, *and* R *of* L. *Execut. of the Testam. of the forel. Execution of the recogniss. forel. to be made thou cause, as of right and according to Law and custom of our Realm of* Engl. *is to be done. Witnes,* &c.

B And if the Statute be not sufficiently certified in the Chancery by the Major, *&c.* because he hath omitted any part of the Bond, as the Name, or sur-Name, or other matter materiall, then upon Affidavit made, that he hath not had execution by reason of that Certificate, he shall have a new Writ unto the Major and Clark, *&c.* to certifie the Statute fully again into the Chancery, notwithstanding his Certificate made before, and that Writ doth appear in the Register.

If the Major doth make a Certificate of the Statute into the Chancery, and delivereth the same unto the Recognisee, and the party keepeth the Certificate, and will not put it into the Chancery; and afterwards another is made Chancellor, the party ought to have a new Certificate to that Chancellor, otherwise he shall not have execution of the Statute upon that Certificate made to the old Chancellor which was not delivered in time into the Chancery: and then he ought to sue a Writ in Chancery directed unto the Major, to make a new Certificate, and the Writ shall be such;

The K. &c. *to the Major of the Staple of* Westm. *the recogniss. of debts in the same Staple to receive deput. greet. Of the part of*

D, &c.

Note, 2 R. 3. 7. 3 several Certificates were made upon one Statute. But I cannot be informed but that they were three several Statutes. And note, That several Writs were awarded upon them to several Sheriffs.

D, &c. *to us is ſhown, that whereas* W *of* E, &c. *the third year of our Raign before you in the Staple foreſ. knowledg. himſelf to owe* A *XL*^{lb} *accord. to form of the Statute Staple foreſ. at certain termes to be paid, and although you the term of payment foreſ. elapſed, to* R *Biſh. of* Lond. *lately our Chancellor, while in the Office of Chanc. he ſtood, under the Seal of the Office, as the manner is, certified; yet becauſe the foreſ.* D, *the ſaid Certific. hitherto retained, and the foreſ.* R *lately Chancellor, to whom before by name you certified, from his Office of Chan. long ſince is and continueth, diſcharge we will, and you we command that the ſaid Certific. to the foreſ. late Chanc. by you made, ſoundly and wholely to you being reſtore; and having ſearched the Rolles of ſuch like recogn. before you the year aboveſ. made, if you ſhall finde the recogn. foreſ. made to have been, then to our now Chanc. in the ſame Chanc. upon the recogn. foreſ. diſtinctly, and openly, accord. to the form of the Stat. foreſ. under the ſeal for recogn. foreſ. deputed, certifie ye without delay, that farther hereupon to be done we may cauſe, what accord. to form of the Stat. foreſ. ſhall be to be done, the ſaid Certific. before ſo made notwithſtanding. Witneſs,* &c.

But note, That if in the firſt Certificate he hath not expreſſed the name of the Chancellor, that then he may deliver that Certificate to the new Chancellor, and ſue execution upon it, and there it is good to make the Certificate generall to the Chancellor, without naming his name.

Recogniſance

Recognisance in the County before the Sheriff.

IF a man do acknowledge in the County before the Sheriff, to pay to another a certain sum of money at a day certain, and do not pay it at the day, then the Recognisee shall have a Writ out of the Chancery unto the Sheriff, commanding him to do execution upon that recognisance, and Writ shall be such; [133]

The K. to the Sher. &c. hath shown unto us A. *that whereas he had impleaded in thy County by our Writ* B. *and the same* B. *in that full County knowledged himself to owe to the fores.* A. *certain money, at a certain term to be rendred, that notwithstanding that term being elapsed, the same money to the same* A. *not yet paid, at his plaint, according to his recognisance to have hast not caused, to the no small damage and grievance of him* A. *and because the same* A. *as just it shall be to help we are willing in this part, we command thee, that if so it be, then that money of the goods, and chattels of him* B. *in thy Bailiwick to be levied, and those the foresaid* A. *without delay to have thou cause, that no clamour again to us therefore come. Witnesse, &c.*

A But it seemeth Recognisance shall be made when a plea is depending in the county before the Sheriff by Writ between the parties in debt *&c.* but if there be not any plea depending in the county by Writ, but by plaint. *Quære*, if that Recognisance shall be made; and it seemeth reasonable that it may be taken, aswel when the plea of debt is depending in the County before the Sheriff by plaint, as if it were by the Kings Writ.

But if a man will come into the County before the Sheriff, and there in Court acknowledge to pay a certain sum of money unto another at a certain day, *&c.* where there is not any plaint nor action depending betwixt the parties, whether this acknowledged shall be good or not, *Quære.* And it seems reasonable, That if it be under the sum of 40 shillings, that such acknowledgment shall be good, and bind the party;

B And if the party have a Writ to the Sheriff to do execution of such Recognisance (as before is said) and the Sheriff will not do the same, then the Recognisee may sue an *Alias & Pluries*, and Attachment against the Sheriff, and the form of the Writ is such:

The K. &c. Of the part if A *we have received that whereas lately thee we commanded, that if* B. *would knowledg himself to owe* A. *ſo much, then him thou ſhouldſt diſtrain the foreſaid debt to the ſame* A. *without delay to render, and although the ſame* B. *before thee hath knowledged himſelf to owe to the foreſaid* A. *the foreſaid debt, yet him* B *that debt to render, to diſtrain hitherto thou haſt deferred, and as yet deferreſt, to the no ſmall damage, and grievance of him* A. *and therefore we command thee that if ſo it is, the execution of the recogniſance without delay to be made thou cauſe, according to the tenour of our mandate foreſaid, and this in no manner omit thou. Witneſſe, &c.*

But it ſeemeth that by this Writ: That if the Recogniſor will not again acknowledge the debt before the Sheriffe when he cometh to him to do execution, *&c.* but ſay that he hath paid the ſame, That then the Sheriffe ought not to do execution. And there is another Writ in this form. *The K. to the Sher. &c. We command thee that if* A. *hath knowledged himſelf to owe* B. *one hundred ſhillings, then him* A. *diſtrain thou the foreſaid debt to the ſame* B. *to render.* And he may have an *Alias* and a *Pluries* and *Attachment* upon the ſame *&c.* And if the Sheriffe return upon the *Alias*, *q. That he hath diſtrained the party by his Corn, or by other Chattels, to which he hath not found buyers,* Then by the rule of the Regiſter ſhall be awarded a Writ of *Pluries reiterando* returnable, *& illud inſuffic. reputand. &c.* But *Quære tamen* of that; for it ſeemeth to be a good returne: and *Quære* if the Sheriff may ſell the goods to pay the Recogniſance, for it ſeemeth by the Regiſter he may ſell the parties goods.

And if a man be in Execution upon a Statute Merchant, he ought to be found in priſon for the rents and revenues of his Lands which are in *Execution*, &c. that is to ſay, with bread and water, as appeareth by the Statute; and if he have not the ſame, he may ſue a Writ upon the Statute directed to the Major and Sheriff, where he is in Execution, that he have the livelyhood which the Statute giveth him, and the Writ is ſuch: *The King to the Major and Sheriffes of* London, *greeting, Whereas in the Statute of Merchants ſet forth is contained, That Merchants for whoſe debts it ſhall happen, their debtors to be arreſted and impriſoned, are bound to finde thoſe debtors in priſon abiding, bread and water for their ſuſtenance, we command you that to* W. *of* S. *for the debts of* E. *of* K. *by form of*

our

our Statute foreſaid, as is ſaid arreſted, and in our priſon detained, if on that occaſion, and no other, he be detained in the ſame, to be done you cauſe in this caſe what is to be done, and as in the like caſe to be done is accuſtomed, according to the form of the ſtatute foreſaid. Witneſſe, &c. And upon that he may have an *Alias*, *Pluries* and Attachment.

Writ de Perambulatione facienda.

D A Writ *de Perambulatione facienda*, ought to be ſued with the aſſent of both parties, where they are in doubt of the bounds of their Lordſhips, or of their Townes.

Then they by aſſent may ſue this Writ, directed unto the Sheriff to make the Perambulation, and to ſet the Bounds and Limits between them in certainty; and the Writ is ſuch:

E *The K. to the Sher.* &c. *We command thee, that taking with thee twelve diſcreet and legall Knights in thy County, in thy proper perſon thou go to the Land of* A. *of* B. *in* N. *and the Land of* C. *of* D. *in* E. *and upon their oath to be made thou cauſe the perambulation betwixt the Land of him* A. *in* N. *and him* C. *of* D. *in* E. *ſo that that Perambulation be made by certain metes, and diviſions, becauſe the foreſaid* A. *and* C. *have put themſelves before us upon that Perambulation, and make known to our Juſtices at Weſtminſter,* &c. *ſuch day, or the Juſtices at the firſt Aſſiſe,* &c. *under thy ſeal, and the ſeales of four Legal Knights of them who at that Perambulation preſent were, by what metes, and diviſions that Perambulation made was, and have there the names of the Knights, and this Writ.*

A And the King may make his Commiſſion to other perſons [134] to make that Perambulation, as well as to the Sheriff, and to certifie the ſame into the Common Pleas, or in the Chancery or elſewhere, &c. And ſuch Commiſſion is oftentimes granted to make perambulation of three or four Counties, where they are in doubt of the Bounds and Limits thereof; and this Perambulation made by aſſent, ſhall bind all the parties and their heires.

B But if Tenant for life be of a Seignory, and another who is Tenant in Fee-ſimple of another Seignorie adjoyning ſue forth ſuch a Writ or Commiſſion, by reaſon whereof a Perambulation is made; It ſeemeth the ſame ſhall not

bind him in the Reverſion; Neither ſhall the Perambulation made with the aſſent of Tenant in taile bind his heir.

And the Perambulation may be made for divers Towns, C and in divers Counties; and the parties ought to come in perſon into the Chancery, and there acknowledge and grant that a Perambulation be made betwixt them, and the acknowledgment ſhall be enrolled in the Chancery; and thereupon a Commiſſion or Writ ſhall iſſue forth. And if the Parties cannot come in Chancery to acknowledge and grant to have ſuch perambulation, Then they ought to ſhew forth a Writ of *Dedimus poteſtatem* directed to certain perſons, to take their acknowledgment, and to certifie the ſame into the Chancery under his ſeale, *&c.* and then upon that Certificate returned into the Chancery, That Commiſſion or Writ may be granted, although the parties do not appear in perſon in Chancery to pray the ſame.

Writ de Warrantia Chartæ.

In a *Warran. Chartæ*, the defendant ſaid, that he had a Formedon pendant of the Land and no plaintiff, and that was

THe Writ of *Warrantia Chartæ* lyeth properly where a D man doth enfeoffe another by deed, and bindeth him and his heirs to *Warrantie*, &c. Now if he defendant be impleaded in an Aſſiſe, or in a Writ of Entry in the nature of an Aſſiſe in which actions he cannot vouch, then he ſhall have that Writ againſt the Feoffor or his heir, who made ſuch warranty; and the Writ is.

againſt the iſſue in taile. Itin. North. 2. *E.* 3. Garr. de charters. 13. 2 E. 2. ibid. 6.

Tenants in common ſhall joyn in a *Writ.* 28 E 3. 50. ſo where 3 are joynt tenants, and a Releaſe to the other two, 40 E. 3. 41, 42.

The K. &c. *command*, &c. *that juſtly*, &c. *he warrant to* E B. *one Meſſuage with the appurtenances in* D. *which he holdeth, and of him to hold claimeth, whereupon his Charter he hath, as he ſaith*, &c. *and unleſſe*, &c. Or thus, *The Mannor of* N. *with the appurtenances, and the advowſon of the Church of the ſame Town which he holdeth*, &c. *to there —— whereupon his Charter he hath, or the Charter of* D. *his father, or mother, or other anceſtor, whoſe heir he is, as he ſaith, and unleſſe*, &c.

16 H. 7. 6, 7. If the defendant tender a plea to the plaintiff, and the plaintiff will not enter it, he ſhall not have advantage in this *Writ*.

And

And although the Writ doth ſuppoſe that he holdeth of the defendant, yet that is not material whether he holdeth of him or not.

F And alſo that the plaintiff holdeth any Land of the defendant by Homage Auncestrel and hath not a Charter thereof, yet he ſhall have this Writ of *Warrantia Chartæ* againſt the defendant, and the Writ ſhall ſay *Unde Chartam habet*, &c. and yet he hath no deed to ſhew, but only ſhall hold by homage Auncestrel, which implyeth a warranty, and therefore in that caſe, thoſe words, *Unde Chartam habet*, &c. are not material.

5 Eliz. Dy 221. If the warranty be only againſt the grantee and his heirs, and there be not *Dedi & conceſſi* in the Charter *per Curiam*, the Writ lyeth not.

12 H. 3. Garr. de Charters. 27. One brought this *Writ. s. Unde Chartam ſuam habet*; the defendant ſaid, *non habet chartam ſuam*, and the plaint. confeſſed the ſame, and ſaid that it was *Charta anteceſſoris ſui*, adding for the defendant.

G If a man have a Leaſe land for life rendring Rent, or maketh a gift in tail rendring Rent without deed, and afterwards the Leſſee or Donee is impleaded in ſuch action where he cannot vouch, then he ſhall have this Writ of *Warrantia Chartæ* againſt the Leſſor or Donour, or his heir who hath the reverſion; for that reverſion and rent reſerved, maketh a warranty in it ſelf by the Statute of *Bigamis*, *cap. ult.* although he hath not any deed thereof.

21 H. 6 8. Upon owelty of Services this *Writ* lyeth; but that is after teiſin of the ſervices.

21 H. 6. 8. Upon a Feoffment in Fee with warranty, he ought in his County to ſet forth the deed. 24. E. 3. 35. acc

H And if a man give Lands to one in Fee by deed by theſe words, *Dedi, Conceſſi*, &c. now he is bound to warrant the Lands unto thee Feoffee by thoſe words, and if the Feoffee be impleaded, he ſhall have a Writ of *Warrantia Chartæ* againſt the Feoffor, by theſe words, *Dedi, Conceſſi*, &c. but not againſt his heir, for the heir ſhall not be bounden unto a warranty made by his father, unleſſe he bind him and his heirs to warranty by expreſſe words in the deed: *as to ſay, & and my heirs all the aforeſaid Lands*, &c. *will warrant*, &c.

I But note, That he ſhall not have the Writ of *Warrantia Chartæ*, againſt the Feoffor, or againſt him againſt whom he hath the warranty if he be impleaded in any action in which he may vouch him, for then he ought to vouch him to warranty; and if he will not vouch him to action, he ſhall not afterwards have a Writ of *Warrantia Chartæ*.

In a *Præcipe quod reddat*, where the Tenant hath a Releaſe or Confirmation with warranty for doubt the poſſeſſion ſhall be counterpleaded, he ſhall have this *Writ* lye. *Wood & Brian*, 12. H. 7. 2.

And a man may ſue forth this Writ of *Warrantia Chartæ* K before he be impleaded in any action, but yet the Writ doth ſuppoſe that he is impleaded; and if the defendant appear and ſay that he is not impleaded; By that plea he confeſſeth the warranty, and the plaintiff ſhall have Judgment to recover his warranty, ſo as if the defendant be after impleaded and vouch him to warranty, and he entreth into the warranty and pleadeth and loſeth, and that the defendant recover in value, The defendant ſhall have in value of the lands againſt the vouchee which he had at the time of the purchaſe of his *Warrantia Chartæ*, and therefore it is good policy to bring his *Warrantia Chartæ* againſt him before he be ſued, to bind the Lands of the vouchee which he had at that time. For if a man be vouched he ſhall not render in value but of the Lands which he had at the time of the vouchee, and if he have alienated the Lands before the voucher, he ſhall render nothing in value; and therefore it is policy to bring his *Warrantia Chartæ* againſt him when he hath the Land to render in value. And upon this Writ and Judgment the land ſhall be bound. But if a man do recover his warranty by Writ of *Warrantia Chartæ*, and hath bounden the Lands which the vouchee had at that time; yet if he be afterwards impleaded for that land, for which he recovered his warranty, he ought to vouch him againſt whom he recovered his warranty, to defend the Land if he be ſued in any action wherein he may vouch, otherwiſe he ſhall not have advantage by recovery of his warranty in the *Warrantia Chartæ*.

21 H. 6. 41.
22 H. 6. 21.
33 H. 7. 17.
2 H. 4. 14. & 12 H. 4. 12. he ſhall have in value the Lands which he had at the time of the Judgment; for the Judgment makes them ſubject to the Execution, 1 E. 3. 11 Fitz. Gar. de charter 2. acc. 8 E. 2. Voucher. 237.

A man cannot vouch a Clark Attaint, or a man outlawed; but ſhall rather have *Warrant. Chart. cont.* of an Idiot *quos reddat. Quære* if it be Law at this day. *Br. Warr Chart.* 29. 8 E. 4. 10. Markham acc. 24 E. 3. *Br. Warrant Chart.* 13. acc. 19 E. 3. *Garr. chart.* 9. acc.

[135] And if a man recover his warranty in a *Warrantia Chartæ*, A and afterwards is impleaded in an action in which he cannot vouch, as by Aſſiſe, or by *Scire facias* ſued forth upon a fine, *&c.* It ſeemeth he ought to give notice to him againſt whom he hath recovered his warranty of the action, and to pray him to ſhew him what he ſhall plead for to defend the land, *&c.* *Quære tamen* thereof.

If a man exchange Lands with another by deed, if he B be impleaded he may vouch him with whom the Exchange was made by reaſon of that exchange; and alſo he ſhall have

23 H. 3. Garr. Charters. 28.

have a Writ of *Warrantia Chartæ* by that deed of exchange, although there are not words of warranty in the deed; and the vouchee shall have a Writ of *Warrantia Chartæ*, *tamen Quære* of that.

7 H. 4. 18. 17 E. 3. & Br. Warr ch. 30.

C And if a man be impleaded who is not Tenant of the Land, but parcenor of the profits, he shall not have a Writ of *Warrantia Chartæ*, because he can lose nothing. And a man

None shall have the Writ but the Terre Tenant. 24 E. 3. 25. Wilbye.

D shall have a Writ of *Warrantia Chartæ*, although he may vouch in the action brought against him, and if he do recover in the *Warrantia Chartæ*, and afterwards lose in the action brought against him in which he hath vouched him against whom he recovered his warranty, Then he shall have a Writ which is called *Habere facias ad valentiam*, &c. presently within the year after the recovery, and shall not sue forth *Scire facias*. And an assignee shall have a Writ of *Warrantia Chartæ*.

7 E. 4. 12. 3 E. 4. 7. a good plea, that he had nothing in the Land jour de briefe purchase.

E And a man shall have a Writ of *Warrantia Chartæ* of land, or Rent which is demanded against him out of land, *&c.* but there he ought to vouch of land discharged of the Rent, *&c.* if he may vouch in the action.

19 E. 3. Gar. ch. 10. 4 E. 3. Garr. ch. 12. acc. for Rent service.

F And a man may bring his Writ of *Warrantia Chartæ* in what County he pleaseth, if the deed bear not date in a certain place, or County; for then he ought to bring the Writ where the deed beareth date. But if a man bring a Writ of *Warrantia Chartæ*, by reason of Homage *Auncestrel*, *&c.* then it ought to be brought in the County where the land lyeth.

G And if a man doth enfeoffe another of Lands by deed with warranty, if the Feoffee maketh a Feoffment over, and taketh back an estate in Fee, the warranty is determined, and he shall not have a Writ of *Warrantia Chartæ*, because he is in of another estate. And so if *A.* disseise *B.* and enfeoffeth *C.* with warranty, who enfeoffeth *D.* with warranty, upon whom a stranger entreth in whose possession *B.* the Disseisee releaseth his Right, all the warranties are extinct, and if *D.* re-enter and be impleaded, he shall not have a Writ of *Warrantia Chartæ*, because he is in of another estate by wrong. But if a man be impleaded, for which he purchaseth a Writ of *Warrantia Chartæ* against whom he hath a warranty, and vouch him also in the Action; and afterwards depending the action, a stranger who hath auncienter title entreth upon him, yet that shall not

E. 1. Voucher. 266. 21 H. 6. 40. Newton. See Littleton. 111. for the reason of this Case.

abate his *Warrantia Chartæ* ſued out before, *quod vide.* 21 H. 6.

a 21 E. Garr. Cont. cr. 29. is but a perſonall action in the nature of a Covenant, therefore

H If a man be impleaded in Aſſiſe, *&c.* and he bring a Writ of *Warrantia Chartæ*, and County, that he is impleaded by Aſſiſe, *&c.* and that he hath loſt, *&c.* If the plaintiff recover his warranty, he ſhall recover his damages, and alſo to have the value of the Land loſt.

he ſhall recover damages. 9 H. 6. 21. It is holden, that in this caſe he ſhall recover damages. But it ſeemeth by *Br. Warr. chart.* 31. that if he hath no Land to be recovered in value, that he ſhall not recover damages *tantum*, no more then in voucher.

I And a man may ſue forth diverſe Writs of warranty of Charters againſt divers men; if he have divers warranties againſt them, he ſhall recover ſeverally againſt them.

K And a man may ſue a Writ of *Warrantia Chartæ* at the Common Law for a warranty made of Lands in auncient demeſne.

L And if a man have a Writ of *Warrantia Chartæ* depending, although that the plaintiff who brought the action againſt him who brought the *Warrantia Chartæ* be Nonſuit in his action, the ſame ſhall not abate the Writ of *Warrantia Chartæ*, although he hath not an action ſued againſt him for the Land, *&c.*

Writ de Meſne.

M THe Writ of *Meſne* lyeth, Where there is Lord, *Meſne*, and Tenant, and each hold by Owelty of ſervices, as by Homage, Fealtie and 20 l. Rent yearly: Now if the Tenant be diſtrained by the Lord Paramount for the Rent or ſervice of the *Meſne* behind, he ſhall have a Writ of *Meſne* againſt the Lord who is *Meſne*, and by the Writ he ſhall recover his damages if he be diſtrained, otherwiſe not; and by that Writ he ſhall be compelled to do the ſervices, and to pay the Rents; And the Writ may be ſued in the County before the Sheriff, and the Writ is ſuch:

18 H. 3. *Meſne.* 78. adiudged that the *Meſne* ought acquit the Tenant againſt all Lords paramount. 29 E. 3. 4. acc.

N

The

The King, &c. We command thee that thou Juſtice A. that juſtly, &c. he acquit B. of the ſervice that C. from him exacteth, of his frank-tenement which of the foreſaid A. he holdeth in L. and whereof he plaineth, that for his default he is diſtrained, as reaſonably ſhow he can, that him to acquit he ought, that no more, &c.

Note, that the plaintiff in a Writ of *Meſne* needeth not in his County to ſhew the certainty of the tenure between the *Meſne* and the Lord Paramount, but generally to ſay, that he holdeth over. *per* 38 H. 6. 12. & 39 H. 6. 29.

13 E. 4. 6. If there be Lord, *Meſne*, and Tenant, and the Tenant is diſtrained by the Lord for which he bringeth a Replevin, the Lord avoweth upon a ſtranger; The Tenant may have a Writ of *Meſne*; yet the *Meſne* cannot joyn becauſe the Avowry is made upon a ſtranger.

And if it be ſued in the Common Pleas, the Writ is.

The K. to the Sher. &c. command A that juſtly, &c. he acquit B. of the ſervice which we exact from him, of his frank-tenement, &c. whereof the ſame A. who Meſne is betwixt us, and the foreſaid B. him to acquit ought, and whereof he plaineth that for default of him he is diſtrained, and unleſſe, &c.

And this Writ is where the King diſtraineth for ſervices, *&c.*

And if another perſon be Lord Paramount, then the Writ is, *That he acquit B, &c. which C. from him exacteth of his frank-tenement, &c. whereof the ſame A. who is Meſne betwixt C. and the foreſaid B. him to acquit ought, &c.*

A And the Writ of *Meſne* may be ſued and removed out of the County at the ſuit of the plaintiff by a *Pone* without cauſe, and at the ſuit of the defendant with cauſe ſhewed, as in a *Replevin.* [136]

And a man may have an acquittal, and ſue forth a Writ of *Meſne* upon it by divers wayes: One, if the *Meſne* grant unto his Tenant by his deed upon his tenure made of him to acquit him againſt his Lord paramount, he ſhall have a

B Writ of *Meſne* upon that grant. Another cauſe of acquittal is, where he holdeth in Frankalmoigne: Another cauſe is, where he holdeth in Frankmariage, Or where he holdeth by the like ſervice as the *Meſne* holdeth over, which is called Owelty. 14 E. 3. *Meſne* 7. 38 H. 6. 12. 39 H. 6. 29. Priſot.

C And alſo a man may have an acquittal by preſcription, as if he hold by homage *Auncеſtrel.*

D And alſo by Conuſance in a Court of Record for to acquit him, *&c.* And the men of *Cornwal* clam to plead a plea in a Writ of *Meſne* in the County without Writ, and that

that they have had allowance thereof in fine. And although the Writ of *Meſne* be depending betwixt the *Meſne* and the Tenant paravaile, yet the Lord ſhall diſtreyn the Tenant paravaile for the Rents and Services, and he ſhall not tarry untill the Writ of *Meſne* be ended betwixt them, whether he ought for to acquit the Tenant or no.

7 H. 4. 12. And if a man bring a Writ of *Meſne* where he is not diſtreined, yet the Writ is maintainable, but then he ſhall not recover damages; for the Writ is brought onely for to recover the acquittall, *&c.* As if he bring a Writ of warranty of Charters where he is not impleaded, *&c.* he is to recover the warranty *pro loco & tempore.*

4 H. 6. 25. 4 E. 4. 35. 11 H. 4. 52. And if the Tenant holdeth by the Services which the *Meſne* holdeth over, and alſo by other ſervices; it is a good owelty to have acquittal, becauſe it is ſuch, and more. And although that the Lord dyeth depending the Writ of *Meſne*, yet the Writ ſhall not abate.

15 H. 6. *Meſne* 12. And Tenant for term of life where the remainder is over in Fee, ſhall have a Writ of *Meſne* againſt the *Meſne*; but Tenant for life ſhall not have a Writ of *Meſne* againſt him in the Reverſion. But Tenant in Dower ſhall have a Writ of *Meſne* againſt him in the Reverſion, becauſe ſhe hath her eſtate by the Law.

38 H. 6. 12. Priſot. 50 E. 3. 23. And if the *Meſne* have paid the Services unto the Lord Paramount, yet if the Tenant be afterwards diſtrained for thoſe ſervices, he ſhall have a Writ of *Meſne*; But it is a queſtion whether he ſhall recover damages in that Writ. But it ſeemeth he ſhall have damages, becauſe the *Meſne* ſhall recover damages againſt the Lord if he will put his Cattel in the pound for the Tenant, and ſue a *Replevin*, &c. and yet not diſtrained in his default, is a good plea in a Writ of *Meſne*. And if he pay the ſervices, he is not diſtrained in his default; for if the *Meſne* grant unto the Tenant to acquit him after the Tenure made, he ſhall have a Writ of Meine thereupon as I conceive.

4 E. 4. 35. Billing. acc. 24 E. 3. *Meſne* 8. And the Husband and wife ſhall have a Writ of *Meſne* where they are diſtrained, for the Land of the Wife.

12 E. 3. *Meſne* 12. 10 E. 3. 58. ibid. 21. 8 E. 3. 26. *Meſne* 19. If the *Meſne* grant the Meanalty for life, and the Tenant attorn; The Tenant ſhall not have a Writ of *Meſne* againſt the grantee for life. But Tenant in tayl ſhall have a Writ of *Meſne*. And ancient demeine is a good plea in a Writ of *Meſne*.

And

L And a Writ of *Meſne* lyeth againſt Tenant for life where the remainder is over in Fee. And the Writ of *Meſne* ſhall be maintainable againſt the heir of the *Meſne* where his anceſtors hath granted the Services of the Tenant by fine, if the Tenant hath not attorned according to the fine; for he ſhall not be compelled to attorn without granting acquittall unto him. And if he grant acquittal, *&c.* he ſhall have a Writ of *Meſne* upon that grant; and yet it commenceth after the Tenour. 40 E. 3. 7. 39 H. 6. 29. 38 E. 3. 34.

M And if the Tenant be diſtrained for the relief of the *Meſne*, or for reaſonable ayd, *&c.* he ſhall have a Writ of *Meſne* againſt him.

N If a man be Tenant by the curteſie of a Meanalty, *&c.* if the Tenant be diſtrained, the Writ of *Meſne* ſhall be ſued againſt him in the Reverſion, and not againſt the Tenant by the Curteſie. H 4. E. 2. Meſne 52.

O A Seigniory is granted unto the Husband and wife, and to the heires of the Husband, and in a *Per quæ ſervitia* ſued by them, the Tenant will not attorn, unleſſe they will grant to acquit him, *&c.* for which the Husband grants for him and his heires to acquit the Tenant and his heires, and afterwards the Husband dyeth; The Tenant may bring a Writ of *Meſne* againſt the husbands heir, during the life of the wife who was Tenant for life, and good. *quod vide.* H. 5 E. 3. Meſne 56.

P And in the time of E. 1. the Tenant brought a Writ of *Meſne*, becauſe he did not acquit him of a Rent-charge demanded, *&c.* becauſe he by his deed, bound him and his heires to warrant and acquit him, and it was maintainable.

Q And an Abbot ſued a Writ of *Meſne* by reaſon of a confirmation made unto him in *Frankalmoigne*, and it was maintainable H. 2. E. 2. 5 E. 2. Meſne 64.

R If a man have Judgment to recover his acquittal in a Writ of *Meſne*, if he be not afterwards acquitted, he ſhall have upon the Recovery a *Diſtringas ad acquietandum* againſt the *Meſne*, if it be three or ten years after the Judgement given; and that is given by the Statute of *Weſt.* 2. *cap.* 9. And a *Scire facias* againſt the Lord. 14 E. 3. Meſne 7.

S If the *Meſne* do acknowledge acquittal by fine, and after he ſueth a *Scire facias* thereupon, and he appeareth not at the return of the Writ; then ſhall iſſue a Writ of *Diſtringas*

gas ad acquietandum, &c. and an *Alias & Pluries*, &c. untill he appear; and if he come upon the *Diſtringas*, and cannot plead any thing, but that he ought for to acquit him, then the plaintiff ſhall recover damages againſt him.

46 E. 3. 31. 14 E. 3. *Meſne* 7. And if the auncestour do acknowledge an acquittal in a Court of Record, the Tenant ſhall have a *Scire facias* againſt the heir to acquit him without other ſpecialty, *&c.* T

46 E. 3. 31. And if a man recover acquittal in a Writ of *Meſne*, &c. he ſhall after have a *Diſtringas ad acquietandum*, and if he do not appear, he ſhall be forjudged by default of his Menalty; and ſo if he appear, and it be found by verdict againſt him, he ſhall be forjudged. V

[137] And a man ſhall have a Writ of *Meſne* to acquit him of ſuit unto a Hundred which the *Meſne* ought to do by reaſon of his Menalty, and not by reaſon of Reſiancy, *&c.* And the proceſſem a Writ of *Meſne* is Summons, Attachment, and Diſtringas; and if the defendant hath not any thing in the County by which he can be diſtrained, Then the plaintiff may ſurmiſe that he hath Affets in another County, and pray a *Diſtringas* thither, and he ſhall have it by the Statute; and upon that he ſhall be forjudged, *&c.* if he do not appear, and the Writ be ſerved and returned againſt him. But that is given by the Statute, for at the Common Law he ſhall not have *Diſtreſſe infinite* in the ſame County where the Writ was brought, and that is in the County where the Land is; and at this day he may chooſe whether he will ſue the proces at the Common Law, Diſtres infinite in the County, or the proces which is given by the Statute, Summons, Attachment, and the Grand diſtreſſe, which ſhall have day to anſwer by ſuch time as two Counties may be holden, in which the Sheriff ſhall make proclamation that he come to anſwer the plaintiff; and if he do not come, and the Writ be returned, then he ſhall be forjudged. A B

Old. Na. Brev. 83. 11 E. 3. Br. ſuit 4 E. 3. 42.

Writ de Plegiis acquietandis.

C THe Writ *de plegiis acquietandis* lyeth, where a man becomes pledge or ſurety for another to pay a certain ſum of money at a certain day, *&c.* if the party doth not pay it at the day, *&c.* If he who became his ſurety be compelled to pay the money, he ſhall have this Writ againſt him who ought to have paid the ſame. But it hath been a queſtion whether this Writ lyeth without ſhewing a ſpecialty; and it ſeemeth reaſonable that it be maintainable, although he have not any ſpecialty to prove it. For the Writ as it ſeemeth is given by the Statute of *Magna Charta*, cap. 8. which is; *That if the pledges will they may have the Lands and Tenements of the debtor, untill they be ſatisfied of the debt which before for him they paid.* And there it is not ſpoken of any writing made betwixt them; and if he have a writing, then he may have remedy thereupon by the Common Law, or by Writ of Covenant, or debt; and then that Statute needed not to have been made. And *Paſc.* 43. *E.* 3. 10. it is adjudged, That the Writ *de Plegiis acquietandis* lyeth without any ſpecialty ſhewed thereof, and it ſeemeth good reaſon; becauſe the Statute makes the tye in that caſe, and that appeareth by the Regiſter, becauſe Writs are given for the Executors of him who became pledge, and againſt him who was the debtour, becauſe their Teſtatour D did not acquit his Sureties, *&c.* And this Writ is vicontiel, and may be ſued in the County before the Sheriff, or in the Common Pleas by a *Præcipe*. And the form of the Writ is ſuch:

vid 22. *Eliz. Dy.* 378.

Fitz. pledges 9. there it was alledged that the cuſtom of *London* was ſuch.

The King to the Sheriff, &c. *We command thee that thou Juſtice* A. *that juſtly*, &c. *be acquit* B. *of* 20 *s. whereof he put himſelf for pledge againſt* C. *and him as yet hath not acquitted, as is ſaid, as reaſonably ſhow he can, that him thereupon to acquit he ought, that no more*, &c. *for default of Juſtice*, &c. And the form of the Writ for the Common Pleas is ſuch, *The* K. &c. *Command* A. *that juſtly*, &c. *be acquit* B. *of one hundred marks whereof he put himſelf for pledge, againſt* C. *and him as yet he hath not acquitted as is ſaid*, &c. *and unleſſe*, &c. Or thus for Executors, *That be acquit* B. *and* C. *Executors of the Teſtament of* D. *of* 10. *l. whereof he put the foreſaid* D. *for pledge, againſt*, &c. *and thoſe as yet hath*

hath not paid, &c. Or thus, *against Executors. Command* A. *and* B. *Executors of the Teſtament of* D. *that juſtly.* &c. *they acquit* E. *of*, &c. *whereof the ſame* E. *put himſelf for pledge againſt* D, &c. *and him not as yet*, &c.

And if a man become ſurety for another in the Exchequer to account for him and doth not, he ſhall have a Writ againſt him to diſcharge him of the Accompt, and the Writ is, E

vid. 30 E. 3. 9. by Kyvyt. Br. pledges 12. the plaintiff ought to have the Writ firſt againſt the party; and if he be inſufficient then againſt the pledges. Mag. Charta *cap.* 8.

The K. &c. *to acquit* A. *of a certain account, which the ſame* B. *for himſelf from the time which the ſame* A. *was Baily of the Liberty of* If. *Queen of England our mother in the County of* D. *before our Treaſurers and Barons of the Exchequer to make be mainpriſed, whereof he put him for pledge againſt us in the Exchequer foreſaid, and him hath not as yet acquitted*, &c.

And if a man become Surety for another to pay a certain F ſumme of money, or to do other thing, &c. ſo long as the principal debtour hath any thing and is ſufficient, his Sureties ſhall not be diſtrained by the Statute of *Magna Charta*; and if they be diſtrained by the Sheriff, &c. they ſhall have a ſpecial Writ upon the Statute for to diſcharge them. And the Writ ſhall be ſuch:

Have ſhown unto us A. *and* B. *that whereas they became pledges for* C. *againſt* D. *for a certain ſum of money in which the ſame* C. *to the foreſaid* D. *was bound, and the ſame* C. *enough hath wherewith the foreſaid debt he may pay, that notwithſtanding* A. *and* B. *are diſtrained to pay the foreſaid* D. *the money foreſaid; and becauſe injuſt it is, that any pledges to the payment of a debt be compelled whiles the principal debtours ſufficient have wherewith their debt render thy may, We command thee, that* C. *thou diſtrain the foreſaid money to pay, and the foreſaid his pledges peace thereupon to have thou permit, and his beaſts if any on that occaſion thou haſt taken, without delay to be delivered cauſe thou. Witneſſe*, &c.

And it ſeemeth that this Writ lyeth, where a man recovereth againſt the Sureties in the County, and the Sheriff diſtrain them to pay the debt, where the principal is ſufficient. But if he ſue the Sureties in the Common Pleas, where the principal is ſufficient to pay the Debt, &c. Now whether the Sureties may plead that, and aver that the principal debtour is ſufficient to pay it; Or whether they ſhall have a Writ to the Sheriff, not to diſtrain them, if

if the principal be ſufficient. *Quare* of thoſe Caſes. And the proces in this Writ is Summons, Attachment, and Diſtreſſe.

Writ of Detinue.

A A Writ of *Detinue* lyeth, in caſe, where a man delivereth Goods or Chattels unto another to keep, and afterwards he will not deliver them back again; Then he ſhall have an Action of *Detinue* of thoſe goods and Chattels; and ſo if a man deliver goods, or money put up in a Bag, or in a cheſt, or in a cupbord to deliver unto another, and he will not deliver the goods, or the money in the Bag, he to whom they ſhould be delivered ſhall have a Writ of *Detinue* for thoſe goods, *&c.* But if a man deliver money not in any Bag or Cheſt, to redeliver back, or to deliver over unto a ſtranger; now he, to whom the money ſhould be delivered, ſhall not have an action of *Detinue* for the money, but a Writ of Accompt; becauſe *Detinue* ought to be of a thing which is certain; as of money in Bags, or of a horſe, or of a hundred Cowes, or ſuch B certain things. And this Writ may be vicontiel, and ſhall be ſued before the Sheriff in the County if the plaintiff pleaſe; or he may ſue it in the Common Pleas, and the form of the Writ in the Common Pleas is. [138]

If a man bail a thing to bail to *I. S.* he ſhall have *Detinue*, Priſot: yet he hath no property till agreement 39 H. 6. 44. Laicon. contr.

7 H. 4. 13. *Detinue* was brought of a Bag with 20 l. and by Martia. 4 H. 6. 1. & 2. If a man bail 20 l. to rebail *Detinue* lyeth, & not accompt: contr. if it were per accompt rendr. 6 E. 4. 11. *Detinue* of four Quarters of Barley, and doth not ſay in Sacks; and yet good.

The K. to the Sher. &c. *Command* A, &c. *that*, &c. *he render to* B. *one Charter which from him unjuſtly he detaineth, as he ſaith, and unleſſe*, &c. Or thus, *That he render* B. *one Boxe, with three writings obligatorie in the ſame boxe contained, under the ſeal of the foreſaid* B *ſigned*; and the Rule in the Regiſter is, *That in the Writ for Charter to be rendred, ever the certain number of the Charters or Writings ought to be put.* And a man may have a Writ of *Detinue* of one writing, and the Writ ſhall be, *Command* A. *that*, &c. *he render* B. *a certain writing, by which the foreſaid* B. *all his goods and chattels in the mannor of* N. *lately being to* J. *of* L. *gave, and granted, which from him unjuſtly*, &c. And the form of the Writ in the County is ſuch. *The K. to the Sher.* &c.

Note, that in 21 *H.* 6. 29. the Writ was *reddat bona & Catalla* 5 and declares of 3 deeds; contr. if of 3 obligations.

We

19 E. 3. Detinue 49. The Writ was Unum Charram, And the Count of a confirmation.

We command thee, that thou Juſtice A. that juſtly, &c. *he render to* B. *one Charter, or three Charters, or one writing obligat. or covenanting, or an acquitance, or teſtament, or writing, which from him unjuſtly he detaineth, as he ſaith, as reaſonably ſhow he can, that thoſe to him to render he ought, that no more*, &c.

And if a man ſue in any Court a plaint of *Detinue* for C any Charters which touch and concern Freehold, if it be not in the Common Pleas by the Kings Writ, the defendant may ſue a Prohibition; to prohibite them, *&c.* and to ſurceaſe, *&c.*

The K. *to the Baily of* J. *of* R. *greeting, Whereas the pl of detin. of Charters, or writings frank-tenement touching in any Courts which record have not, according to Law and Cuſtom of our Realm, without our Writ to be impleaded ought not and* W. *of* B. *of that, that the ſame* B. *render to the foreſaid* W. *three Charters before you in the Court foreſaid of the Lord of* R. *without our Writ impleadeth, as we have received, you we command, That if ſo it be. Then that plea before you in the Court foreſaid, without our Writ further to hold, ye ſuperſede altogether, and the foreſaid* W. *ye tell of our part, that our Writ of Detinue of the Charter foreſaid againſt the foreſaid* B. *he procure for himſelf, if to him it ſhall ſeem expedient. Witneſſe*, &c.

And the plea may be removed by *Pone* out of the County D at the plaintiffs ſuit, without cauſe ſhewed in the Writ; and at the ſuit of the defendant he ought to ſhew cauſe in the *Pone*: and this clauſe ſhall be in the end of the Writ, *Fiat executio iſtius brevis ſi cauſa ſit vera, aliter non*, &c.

And if a man find my goods which I have loſt, I ſhall E have a Writ of *Detinue* of them.

38 H. 6. 24. 25. Lit. And if a man giveth Lands in tayl by deed indented, and F the Donee dyeth without heir, the donour ſhall have a Writ of *Detinue* for that part of the deed indented which the donee had.

And ſo if Lands be given to two men and the heirs of one of them; If the Tenant for life dyeth, he who hath the Fee ſhall have a Writ of *Detinue* for that deed.

7 E. 4. 26. Moitie.

18 E. 4. 14. the Feoffee ſhall not have this Writ againſt a ſtranger. If a man make a Feoffment in Fee of his Land by deed, G yet the Feoffee ſhall not have the Charters concerning the Land, but the Feoffor ſhall keep them, if he do not give them to the Feoffee; but againſt a ſtranger the Feoffee ſhall have an Action of *Detinue* for thoſe Charters which concern

concern the Lands, if he cannot make title by the Feoffor, or thoſe who claim title by the Feoffor.

H And the heir in tayl ſhall have a Writ of *Detinue* againſt the Diſcontinuee for the deed of intayl by which the Land was given. 4 H. 7. 10.

I And if a man maketh a Feoffment in Fee of his Land which is Fee-ſimple, his heir ſhall have the Charters which concern the ſame Lands, and not the Executors of the father. 9 H. 6. 58. The heir ought to make Title to the Land, otherwiſe the Executors ſhall have them.

K If a man make a Leaſe for years, and afterwards confirms his eſtate in Fee, the heir of the Feoffee ſhall have the deed of the Leſſor for years, as well as the deed of confirmation, becauſe that that deed doth make the confirmation good: And ſo of every deed which maketh his title, or a releaſe, or the like, without which his title ſhall not be ſure, and he ſhall have an Action of *Detinue* for them. 19 H. 6. 41. acc. 9 E. 4. 52.

L And the heir ſhall have a *Detinue* of Charters although he hath not the land; As if I be enfeoffed with warranty, and I enfeoffee another with warranty in Fee, my heir ſhall have a *Detinue* of that deed by which I am enfeoffed, becauſe he may have advantage of the warranty. 9 H. 6. 15. 10 E. 4. 9. 39 E. 3. Br. Chait. 38.

And if my Father be diſſeiſed and dyeth, I ſhall have a *Detinue* for the Charters, although I have not the Land; and the Executors ſhall not have the action for them. 10 E. 4. 9. 10 E. 4. 14. The Lord by Eſcheat ſhall have *Detinue* for Charters.

M And if a man have goods delivered to him to deliver over to another, and afterwards a Writ of *Detinue* is brought againſt him by him who hath right unto the goods; Now if the defendant depending the action deliver the goods over to whom they were bailed to him for to deliver, tho ſame is a good barr in the Action, becauſe he hath delivered them according to the baylment made unto him. [139]

A And after divorce made betwixt the Husband and the Wife, the Wife ſhall have a Writ of *Detinue* for the goods given with her in *Frankmariage*, which ſee M. 34 E. 1. And the proceſſe in *Detinue* is Summons, Attachment, and Diſtreſſe. For *Detinue* 61. 13 H. 3. Prohibition. 21. See 44 c.

Writ de recto de Custodia terræ & hæredis.

THe Writ *de custodia terræ & hæredis* lyeth, where the B Tenant holdeth of his Lord by Knights Service, and dyeth in his homage, and a ſtranger entreth into the land, and taketh the body of the heir, The Lord of whom he holdeth the land ſhall have the Writ of *Custodia terræ & hæredis*; and the Writ is ſuch:

The King to the Sheriff, &c. *Command* A. *that*. &c. *he render* B. *the wardſhip of the Land and heir of* C. *which to him* B. *belongeth, becauſe the foreſaid* C. *his land of him held by Knights ſervice, as is ſaid, and unleſſe*, &c. Otherwiſe for C the heir only, *Command* A. *that he render* B. *and* C. *his wife* W. *the ſon and heir of* E. *whoſe Wardſhip to them* B. *and* C. *belongeth, becauſe the foreſaid* E. *his Land of the foreſaid* C. Or thus, of J. *the Father of the foreſaid* C. *whoſe heir ſhe is held by Knights ſervice as is ſaid, and unleſſe*, &c. And a Writ of the Lands only is ſuch; *Command* A. *that*, &c. *he render* B. *the Wardſhip of one Yard land with the appurtenances in* R. *which to him belongeth, becauſe* C. *that Land of him by Knights ſervice held as is ſaid*, &c. Or thus, *by reaſon of a demiſe which to him* B. *belongeth, which* A. *of whom the foreſaid* C. *that Land held by Knight ſervice thereof made to the ſame* B. *as he ſaith*, &c.

And if a man have a Ward by reaſon of a Ward, and he D is taken from him, the Writ ſhall be thus; *That he render* B. J. *ſon and heir of* C. *whoſe Wardſhip to him belongeth by reaſon of the Wardſhip of the Land and heir of* R. *of whom the foreſaid* C. *his Land held by Knights ſervice, in the Wardſhip of him* B. *being.*

And if the Lord Paramount will ſhew a Writ of Right of E Ward for the Services and Rent, and the heir of the Meſne, he may have a general Writ of the land and heir, if he will, or a ſpecial Writ thus: *Command* A. *that*, &c. *he render the Wardſh. of* x. *ſhill. of rent, and the heir of* C. *which to him belongeth, becauſe the foreſaid* C. *the tenement whence that rent cometh of him held, by Knights ſervice as he ſaith.*

And this Writ may be ſued in the County before the She- F riff by 2 *Juſtices*, and then the Writ is ſuch; *We command thee that thou Juſtice* A. *that he render* B. *the Wardſhip of the Land, and heir of* C. *which*, &c. *as he ſaith, as reaſonably*, &c.

And

G And the plaintiff may remove the same by a *Pone* without cause shewed, and the defendant ought for to shew cause in the *Pone*, as he shall do in a *Replevin*.

H And it appeareth by the Register, That the Gardian in Socage shall have the Writ of Right of Ward of the heir alone, or of the Land alone, or of both; for the heir thus:

The King, &c. *Command* A. *that*, &c. *he render* B.W. *the son and heir of* C. *whose Wardsh. to him* B *belongeth*, *because the foresaid* C. *that Land held in Socage*, *and the foresaid* B. *next is to the heir of him* C. *as he saith.* And there is the like Writ for the Land. And the reason and cause that he shall have this Writ seemeth to be, because that for the land he cannot have other remedy, if he cannot enter into the Land: and yet I conceive that Gardian in Socage shall not have a Writ of Right of Ward for the Land, because he is accomptable unto the heir for the same, which proves he hath no right unto the land, but as Baily.

And the Gardian in Socage shall have a Writ of Ward for cause of Wardship, where his Gardian ought to have another Infant in Ward because he is next of blood unto him to whom the Inheritance cannot descend; and the Writ is such:

The K. &c. *Command* A. *that*, &c. *he render* B. *the Wardsh. of the Land*, *and heir of* C. *which to him belongeth by reason of the Wardsh. of* J. *the son and heir of* D *who that Land held in Socage*, *and the foresaid* B. *next is to the heir of him* J. *as he saith*, *and unlesse*, &c.

I And it seemeth, That a Writ of Right *de communi custodia* was at the Common Law, and as well for Gardian in Socage for the body of the heir, as for Gardian in Knights service. But the Writ of Ravishment of Ward was not at the Common Law for the Gardian in Knights service, but the same was given by the Statute of *West.* 2. *cap.* 35. And by the Equity of that Statute, Gardian in Socage shall have a Writ of Ravishment of Ward as well as Gardian by Knights service; and by the same reason he shall have a Writ of Right of Ward at the Common Law, as Gardian in Socage shall have.

K And if the *Mesne* hath two daughters, one within age, and the other of full age and dyeth; and the Lord hath the Wardship of her within age, and afterwards the Tenant

dyeth his heir within age, now the Lord Paramount, and the Sister of full age who is one of the Mesnes, shall have a Writ of Right ward in this form.

Command A. &c. *that*, &c. *he render to one of the daughters, said heirs of* W. *and* P. *of* E. *the Wardsh. of the Land and heir of* R. *which to them* B. *and* P. *belongeth. because the foresaid* R. *his Land of the foresaid* B. *and* M. *Sister of the same* B. *another daughter, and heir of the same* W *within age, and in the Wardsh. of the foresaid* P. *being held by Knights service as they say, and unless*, &c. And it appeareth in the Register, That the Writ *de Ejectione Custodiæ* lyeth for the Land, and for the heir together, for the Writ is such: L

11 H. 4. 64, 65. If the Ejectment of Ward be brought of Land only, the party must shew the Certainty of the Land; But it it be of the Body and Land, the *Writ* general, *de terris & hæredis* is good.

22 Eliz. Dy. 399. It lyeth not but of Land onely.

[140] *The King*, &c. *If* A. *shall*, &c. *then summon*. &c. B. *to shew why whereas Wardship of the Land and heir of* C. *to the lawfull age of the heir foresaid to him* A. *belongeth, because the same* C. *his Land of him held by Knights service, and the same* A. *in full and peaceable seisin of the same Wardsh. long time was the foresaid* B. *the foresaid heir within age being, him* A. *from that Wardsh. violently ejected, as he saith, and have there the summons and this Writ*, &c.

If he who ejects alien to another, yet he may have this *Writ* against him who ejected him; and yet the party shall recover Land in this *Writ*. 12 *H.* 4. 10. by Hankford; so if one eject the Ejector, he who was first ejected shall not have this *Writ*, no more then one shall have Trespass. &c. against the second Trespassor. 39 Ass. 9.

Another Writ for the Land only, where A he hath the same by grant of the Gardian, thus; *The King to the Sheriff*, &c. *If* A. *shall*, &c. *then summon*, &c. B, &c. *why whereas the Wardsh. of one Yard land with the appurtenances in* D. *to the lawful age of* J. *son, and heir of* C. *to him* A. *belongeth, by reason of the demise which* R. *of whom the foresaid* C. *his Land held by Knights service thereof made to the same* A. *as is said, and the same* A. *in full and peaceable seisin of the same Wardsh. long time was, the same* B. *the heir foresaid within age being, the foresaid* A. *from the Wardsh. foresaid violently ejected, as he saith*, &c.

Another Writ when a man hath a Ward of the Kings B grant, and he granteth the same over unto another, Then thus as above; *By reason of the demise which* C. *who that Wardsh. had of the Commission of the Lord* Ed. *lately King of* England *our father; of whom the foresaid* R. *his Land held, by*

by Knights ſervice thereof made to him B, &c. *and the ſame* B. &c. Or thus, *If* B. *ſhall*, &c. *then ſummon* B. *to anſwer as well us as the foreſaid* G. *why whereas we have committed to the foreſaid* E. *the Wardſh. of the Lands and Tenements of* J. *which were, deceaſed, who of us held in capite, and which by reaſon of the minority of* P. *couſin and heir of the foreſaid* L. *in our hands were, to have with all things to that Wardſh. belonging, untill the lawfull age of the heir foreſaid, and the ſame* E. *in full and peaceable ſeiſin of the ſame Wardſh. by pretext of our Commiſſion foreſaid long had been, the ſame* B. *the heir foreſaid within age being, the foreſaid* B. *from the Wardſh. of one hundred ſhillings of rent with the appurtenances in* H. *violently ejected, as is ſaid*, &c.

C And Gardian in Socage ſhall have a Writ *de Ejectione Cuſtodiæ*, as appeareth by the Regiſter; and the like reaſon, as well as he ſhall have a Writ of Raviſhment of Ward for the body, he ſhall have a Writ of Ejectment of Ward for the Land. 13 H. 4. 17.

D And if a man have the Patronage of an Abby or Priory, and hath right to have the Temporalties during the time of vacation of them, if he have the poſſeſſion thereof, and be ouſted, he ſhall have a Writ *de Ejectione Cuſtodiæ*; and the Writ ſhall be ſuch:

To ſhow, why whereas the Cuſtod. of the Priory of B. *to him* A. *in the Vacations of the ſame Priory belongeth, and the ſame* A. *in full and peaceable ſeiſin of the ſame Cuſtody in the laſt vacancy of the ſame Cuſtody in the laſt vacancy of the Priory foreſaid long time was, the foreſaid* B. *the foreſaid* A. *from that cuſtody violently ejected*, &c.

And by the Regiſter it is ſaid, That the Writ of Right may be ſued *de Cuſtodia Priore*, in time of vacation, *&c.* thus:

The King, &c. *Command*, &c. *that*, &c. *he render to* B. *the Cuſtody of the Priory of* N, &c.

And that is grounded upon the Statute of *Magna Charta*, cap. 2. *That all Patrons of Abbies*, &c.

And there is another Writ of Ward for the body, which is called a *Writ of Raviſhment of Ward*: and that Writ lyeth as well for Gardian in Socage as for Gardian in Knights ſervice.

E And if a man have one in ward becauſe his Anceſtour held of him by Knights ſervice, and the Ward is raviſhed

and taken from him, he shall have that Writ of Ravishment of Ward.

And so shall the grantee of the Ward, or his Execu- F tors if he be taken from them; and the form of the Writ for the Lord of whom the Auncestor of the Ward held is such:

The K. &c. *greeting*, &c. *If* A. *shall*, &c. *then put*, &c. B. *that he be before our Justices, or before us such day*, &c. *where-soere*, &c. *to show why* J. *the son and heir of* C. *within age being, whose marriage to him* A. *belongeth, at* N. *found did he ravish and bring away against the will of him* A. *and against our peace, and in the mean time diligently inquire thou, where the heir is in thy Bailiwick, and him wheresoere he shall be found take thou, and safely and surely keep, so that him thou mayst have before our foresaid Justices.* Or thus, *Before us*, &c. *at the foresaid term, to be rendred, to which of the fore-said* A. *and* B. *rendred he ought to be; and have.* &c.

And if the heir be ravished and carried from County into County, then the Writ shall be thus:

The K. *to the Sheriff*, &c. *Plained hath to us* A. *that* B C. *the son and heir of* J. *within age being, and in his Wardship being, and* E. *in the County of* Linc. *ravished, and from that County unto* J. *in thy County, brought away against the will of him* A. *and against our peace, and therefore we command thee that the foresaid heir, wheresoere in thy Bailiwick find him thou canst, thou takest, and safely and surely keepest so that him thou mayest have before our Justices at*, &c. *such day, which day the same* A. *hath against the foresaid* B. *to be rendred to whom of right rendred he ought to be, and have*, &c.

And the form of the Writ for the Gardian in Socage is thus:

The King, &c. *If* A *shall*, &c. *then put*, &c. B &c. *why* G *whereas the Wardship of the Land, and heir of* C. *to the lawful age of him the heir, to him* A. *belongeth, because the foresaid* C. *that Land held in Socage, and the foresaid* A. *is next to the heir of him* C. *and the same* A. *in full* &c. *long was, the fore-*
[141] *said* B. W. *the son, and heir of the foresaid* C. *within age, and in the Wardship of him* A. *being at* N. *found, with force and armes he took, and led away, and oth. things enormous to him did, to the grievous damage of him* A. *and against our peace, and have there the name of the pledg. and this Writ, Witnesse*, &c. Or thus, *With force, and armes ravished him, and*

without

without the Licence, and will of him A. *married, to the grievous damage,* &c.

A And if the Infant be in the cuſtody of the Lord, and during his non-age he enter upon the Lord, and ouſte him of the land which he ought to have in ward, Then the Lord ſhall have a Writ of Entruſion of ward againſt him, and the Writ ſhall be ſuch:

B *The King to the Sheriff,* &c. *If* A. *ſhall,* &c. *then ſummon,* &c. J. *the ſon and heir of* C. *to ſhow why, whereas the wardſhip to him* A. *unto the lawfull age of the heir foreſaid to him belongeth, by reaſon of the demiſe which* L. *of whom the foreſaid* C. *his Land held by Knight-ſervice, thereof made, to the foreſaid* A. *and that* A. *in full and peaceable ſeiſin,* &c. *was, the foreſaid* J. *within age being, himſelf into the Land foreſaid intruded, and that wardſhip from the foreſaid* A. *detaineth, to the no ſmall damage and grievance of him* A. *as is ſaid,* &c. *and have,* &c. Or thus, *To ſhow why, whereas the wardſh. of the mannor of* T. *with the appurtenances unto the lawfull age of the foreſaid* J. *to him* A. *belonged, by reaſon of the demiſe which* B. *to whom* H. *of whom and of Alice his Wife, the foreſaid* C. *that Mannor held by Knights ſervice that demi ed, thereof made, to the foreſaid* A, &c. *and the ſame* A. *in full,* &c. *the foreſaid* J. *while within age he was, himſelf into the Mannor foreſaid intruded, and that wardſhip from the foreſaid* A. *hitherto detaineth to the damage,* &c. *as is ſaid,* &c. *and have,* &c.

C And the Writ lyeth where the Tenant holdeth of a man and his wife by Knights ſervice in the Right of the wife, and the Tenant dyeth his heir within age, and the Husband granteth the wardſhip of the land unto another who granteth it over unto another, upon whom the heir intrudeth, *&c.*

D And if the Lord have the cuſtody of the heir within age, and tender him a convenient marriage, and he refuſeth it and intrudeth, Then the Lord ſhall have a Writ againſt him for to recover the value of the marriage, and alſo to recover the land, which ſhall be ſuch: 2 H. 7. 9. 31 Aſſ. 26. Br. Aſſiſe 321.

The King to the Sheriff, &c. *If* A. *ſhall,* &c. *then ſummon,* &c. B, &c. *to ſhow why, whereas the marriage of the foreſaid* B. *to him* A. *belongeth, becauſe the foreſaid* B. *his Land of him holdeth by Knights-ſervice. and the ſame* A. *to the foreſaid* B. *while he was within age in his wardſhip competent marriage* vid. 8. Eliz. Dyer 255. the tender traverſed.

without diſparagement, according to form of the Statute of the Common Councel of our Realm thereupon provided, often hath offered, the ſame B. that marriage refuſing, the foreſaid A. of his marriage not ſatisfied, himſelf into his Land and Tenements intruded, and his marriage contradicts, &c. to the grievous damage, &c.

And it appeareth by the Writs aboveſaid, That the Gardian ſhall have a Writ of Entruſion of Ward againſt the heir, as well at his full age, as during his non-age. E

There is another Writ *de valore Maritagii* for the Lord or his Executors againſt the heir without ſpeaking of any intruſion made by the heir into the land; and the Writ is ſuch: F

The King, &c. If A. ſhall, &c. then ſummon, &c. why whereas the marriage of him L. &c. to there He offered, the foreſaid L. that marriage refuſing, of the foreſaid marriage, the foreſaid L when now his full age he hath attained to ſatisfie refuſed, &c. and againſt the form of the Statute.

And if the heir be in the Lords cuſtody, and doth marry himſelf within age without the aſſent of the Lord, and when he cometh of full age, the entreth upon the Lord, and puts him out of the land, Then the Lord ſhall have a Writ of forfeiture of marriage againſt him, for the double value of the marriage; and the Writ ſhall be ſuch: G

If A. ſhall, &c. then ſummon C. the ſon and heir of D. that he be before our Juſtices, &c. to ſhow why whereas the marriage of him C. together with the Wardſhip of one acre of Land with the appurtenances in N. to him belongeth, by reaſon of the demiſe which L. who that Wardſhip had of the demiſe of F. to whom G. that demiſed, of whom the foreſaid D. that Land held by Knights ſervice thereof made to the foreſaid A. and the ſame A. to the foreſaid C. while he was within age, and in his Wardſhip competent marriage without diſparagement according to form of the Statute of the Common Councel of our Realm thereupon provided, often offered, the ſame C. that marriage refuſing, himſelf without the Licence and will of him A. to be married cauſed, and himſelf into the Lands foreſaid (the foreſaid A. for the marriage foreſaid not ſatisfied) intruded, and of the marriage foreſaid the ſame A. to ſatisfie contradicts, to the grievous damage of him A. and againſt the form of the Statute foreſaid, as he ſaith, and have, &c. ſummon, &c. witneſſe, &c. H

And

I And that Writ lyeth where the Lord granteth the Wardship of the heir and land of his Tenant unto *F.* who granteth the same heir and land unto *L.* who granteth the same over unto the said *A.* the now plaintiffe, who tendereth marriage unto *C.* and he refuseth the same, and marrieth himself during his Non-age, and at his full age entreth into the land, the marriage not satisfied, *&c.*

K And otherwise for the Lord against the Tenant himself thus:

If A. *shall,* &c. *summon,* &c. B. *the son and heir of* C. *that he be before our Justices,* &c. *to show why whereas the marriage of the foresaid* B. *to him belongeth, because the foresaid* C. *his Land of him held by Knights service, and the same* A. *to the foresaid* B. *while within age hewas,* &c. *compet. marriage without disparagement frequently offered, the same* B. *that marriage to admit refused, and without the Licence and will of the foresaid* A. *himself married, &c. to the grievous damage,* &c.

L And the Lord may have such Writ of Forfeiture of marriage against the heir of the Mesne, if he marry during his Non-age, and enter into the Menalty, or take the Rent and services of the Tenant paravaile, and the Writ shall be general, as if he were Tenant paravaile, *&c.* not making mention of the Menalty. [142]

A If a man be Tenant in tayl, the Reversion to the King, and the King doth licence him to alien in Fee, and to take back an Estate unto himself and his wife in tayl, the remainder to his right heirs, and he maketh such feoffment, and taketh back an Estate unto himself and his wife in tayl, the remainder to his right heirs, and dyeth his heir within age; The King notwithstanding his licence shall have the Wardship during the life of the wife, for that the Licence doth not give him power to alien the Kings Reversion, *&c.* And when the Reversion cannot be discontinued, the estate tayl cannot be discontinued, but by his death the heir may enter into the Land, and so may the King in his Right.

B If a man have lands for life, the remainder in Fee unto another, and he in the remainder dyeth, his heir within age, he shall not be in Ward during the life of Tenant for life; because that during his life, the Tenant for life is *vid.* Dyer. 8. & 12. & 132. b. C. 3. part. 92.

Tenant

Tenant to the Lord Paramount, although the land be holden by Knights-ſervice. And the Gardian ſhall put out the Termor who holdeth for years of the Leaſe of his Tenant.

And the Statute of *Marlebridge* in a manner proveth he C may ſo do. And there are many old books to prove the ſame by Judgements there given; and it ſeemeth reaſonable that it ſhould be ſo, by the ancient Title which the Lord hath, when he reſerved ſuch Services upon his feoffment, to have the Wardſhip if he dyeth, the heir being within age.

C. 3. part. 35. 41 E. 3. 18. *Br. Warr.* 20. And if the Tenant be diſſeiſed and dyeth, his heir being D within age, the Lord ſhall ſeiſe the Ward, and enter into the land upon the diſſeiſor in the right of the heir.

33 H. 6. 16. Priſot. But if the Tenant doth enfeoffee his Son during his non- E age, who doth homage unto the Lord, and afterwards the Tenant dyeth the heir within age, the Lord ſhall not have the Wardſhip of them, becauſe he hath accepted of him for his Tenant in the life of the Father. But it appeareth by *Magna Charta*, That the Lord ſhall take Homage of the heir before he have the Wardſhip of him, but that is after the death of the auncеſtour, and not in the life of the auncеſtour, and ſo was the Law taken in Old books.

14 Aſſ. Br. Aſſiſe 192. Com. 133. 36 E. 3. Gard. 11. 31 E. 1. Gard. 155. *Br.* Fealty 9.

If a man purchaſe Lands by feoffment, which are holden F ſeverally of divers Lords by Knights ſervice, and afterwards dyeth his heir within age, That Lord who firſt getteth the Ward ſhall have him becauſe there is no priority: But if he purchaſe lands which are holden by Knights ſervice of one Lord, and afterwards purchaſe lands by Knights ſervice of another Lord, and dyeth his heir within age, that Lord ſhall have the Wardſhip of the heir of whom the land firſt purchaſed was holden, for he holdeth of him by the moſt auncient feoffment, and priority, then he holdeth of the other Lord.

Good barr in Forfeiture of Marriage, in 7 E. 2. Action ſur. Statute 31. So of Land in uſe. 21 H. 8. *Br.* prerogative. 92.

And if a man hold of the King by Poſteriority; and holdeth lands of another Lord by priority, and afterwards dyeth his heir within age, the King ſhall have the Wardſhip of his body by his Prerogative, not having regard to the priority or poſteriority.

C. 5. part 36.

And if a man hold of the King by poſteriority, and of another Lord by priority, and afterwards the King granteth the

the Seignory unto the Queen for life, and afterwards the Tenant dyeth his heir within age, The Queen shall have the Wardship of the body, not having regard unto the posteriority, because that the reversion of the Seignory doth remain in the King.

Quare if Plenerty be a good plea against the Queen, where the Reversion is in the King. 18 E. 3. 13. Stamford prerogative. 33.

But if the King hath granted the remainder of the Seignory in Fee unto a stranger, Then it seemeth the Queen shall not have the Wardship of the body, for the Seignory of posteriority, *&c.* and priority is changed by the Feoffment of the Tenant of the Land. As if he make a Feoffment in Fee of the land which he holdeth by priority, and takes back an estate again of the same, Now he holdeth the same land of that Lord by posteriority; whereas he held it before of him by priority. But if the Lord of whom the Tenant holdeth by priority, grant his Seignory unto another in Fee, and take back again an estate in the Seignory to him in Fee, *&c.* yet the Tenant holdeth of him by priority as he held before: because the pleading of priority is to say, That he holdeth of such a man and his aunceſtour, or of those whose estate he hath in the Seignory, *per antiquius feoffamentum*, &c. then he holdeth the other land, so that the feoffment of the land doth make the priority. And if the Tenant do forjudge the Mesne, of whom he holdeth by priority, *&c.* Yet he shall hold by priority of the Lord Paramount, as he held of the Mesne before, *&c.*

If he make a Feoffment at this done to his use, *Quare* if the priority be gone. 2 E. 2. Fitz. Gard. 2. acc.

G The Major and Aldermen, and Chamberlains by the Custom of *London* shall have the Custody of the Orphans in the City, and if they commit the Custody of such Orphan to another: He shall have a Writ of Ravishment of Ward, against him who taketh the Ward out of his possession.

H And if the Gardian marry the heir after the age of 14. years, and afterwards the heir is taken by a stranger, the Gardian shall not have a Writ of Ravishment, *&c.* because he hath had the effect of his marriage.

I If a man have a Ward in the Right of his wife, although the wife dyeth, yet the Husband shall have the Ward, because it is a Chattel vested in him.

Tenant in tayl grants his estate of a Mannor unto which Advowson is appendant, the Church void, Tenant in tayl dyeth, the Grantee shall have the Advowson. So if the Church void during the Term, and the Term expire. 9 E. 3. *Quare Impedit.* 18.

Where

Where the Tenant maketh a Feoffment by Colluſion, and the Lord accepteth the ſervices of the Feoffee, then he ſhall not have the Wardſhip of the Tenants heir, nor ſhall overſee the Colluſion. K

But the uſe of a Seignory ſhall not have Gard. for the Feoffees before 27 H. 8. were Lords.

But if a man at this day maketh a Feoffment in Fee to his uſe, and the Lord accept the Services of the Feoffee; yet if the Feoffor who hath the uſe dyeth his heir within age, the Lord ſhall have the Wardſhip of his heir by the Statute of 4 H. 7. cap. 17.

[143]

And if a man leaſe lands for term of life, the remainder to the Husband and Wife in tayl, the remainder in Fee to the heirs of the Husband, and the Husband and Wife dye, his heir within age being Tenant for life, his heir ſhall not be in Ward. A

If the Kings Tenant giveth lands in tayl without the Kings Licence, and the King accepteth the auncient Tenant for his Tenant, and the Services, and afterwards the Donee in tayl dyeth his heir within age, the King ſhall have the Wardſhip of him, as ſeemeth by the Statute of 34 E. 3. cap. 15. And this acceptance of the Services ſhall not conclude the King; for the King ſhall not be concluded, *&c.* if he have matter to ſhew which may ſerve him. And yet in *Anno* 4 H. 6. it is adjudged contrary; and therefore *Quære* the Law in that Caſe. B

27 H. 8. 26. Fitzherbert contr. 34. & 35 H. 8. Dyer. 54. 4 H. 6. 19.

And the lands of the wife within age ſhall be in Ward, although her Husband be of full age. C

And if a woman be paſt the age of fourteen years at the time of the death of her auncеſtor, ſhe ſhall not be in Ward.

The Committee of the King ſhall not have a Ward by reaſon of the Ward, but the King ſhall have the ſame, becauſe the King remaineth Gardian, *&c.* and the heir ſhall ſue Livery. D

2 H. 4. 19. 22. 40 E. 3. 14. contr. 20 Eliz. Dyer. 277.

If a Biſhop have Title to have a Ward, and doth not ſeiſe him in his life time, and dyeth; The Succeſſor ſhall have that Ward, and ſhall ſeiſe him, *&c.* Otherwiſe it ſeemeth if the Biſhop had ſeiſed him. E

the Executors of the predeceſſor ſhall have the Ward.

If the heir female be married by the Lord before her age of 14 years, and afterwards the Husband dyeth, the heir female ſhall not be married again by the Lord, *&c.* And by the ſame reaſon he ſhall not have a Writ F

of

of Raviſhment of Ward, if another man do raviſh him afterwards.

G If the Grandfather have a Sonne; and the Sonne taketh a wife and hath iſſue and dyeth, the Mother of the iſſue ſhall have the Wardſhip of the Child which is her own Child, and not the Grandfather, although the iſſue may have the land which ought to deſcend to him by the Grandfather, and although that the mother ſhall not have the land. *Hill.* 31. E. 3. C. 6 part. 22. 6.

H If an Infant recover land by a Writ of *Dum non fuit compos mentis*, he ſhall not be in Ward; and ſo it ſeemeth if he doe recover by a Formedon or other Action aunceſtrel, where he could not enter, becauſe his aunceſtor did not dye Tenant to the Lord, *&c.* nor in his Homage. 11 H. 7. 12. contr. 7 H. 4. 12. acc.

I And a man may ſeiſe his Ward, although he be apprentiſe, or in ſervice of another.

K But if the Tenant maketh a Feoffment by Colluſion, The Lord ought to recover the Land by a Writ of Right of ward, before he ſhall have a Writ for the raviſhment of the ward, *&c.*

L If a man be Tenant by the Curteſie of a Deaconry, the heir ſhall not be in ward during the life of the Tenant by the Curteſie, *&c.*

But if a man have iſſue a Son, and afterwards be taketh a wife who hath lands holden by Knights ſervice, and hath iſſue by her, and afterwards the wife dyeth, if the Husband be not Tenant by the Curteſie of the land, then the Husbands younger ſon ſhall be in ward during the life of his Father, *&c.*

M If an Infant be married in the life of his father within the age of Conſent, and afterwards the father dyeth, the Infant being within the age of Conſent; The Lord ſhall have a Writ of Raviſhment of Ward for the Infant, becauſe he may perhaps diſagree unto the marriage. 30 E. i. Gard. 156. acc. but ſhall not have Forfeitage upon tender and refuſal. 7 *H.* 6. 11. in Caſe of the King. 40 Aſſ. 7.

N And the Lord of the Villeine ſhall have the Wardſhip of the land and body of the heir of the Villeine, if he ſeiſe him before the Lord, *&c.* otherwiſe not of the land. 8 H. VIII. 5 i.

O If lands deſcend unto the wife, and afterwards the wife

wife hath iſſue by her Husband and dyeth, before the Husband entreth, ſo that he ſhall not be Tenant by the Curteſie, The iſſue ſhall be in ward if he be within age, and if he be not heir apparent to the Husband; and ſo it the iſſue by the wife were a woman, and within age, where the Husband hath a ſonne living, that iſſue within age ſhall be in ward, during the life of the Husband which is its Father.

And *Paſc.* 31. E. 3. The opinion was, That if the Husband have not lands which ſhall from him deſcend to his iſſue, That then his iſſue ſhall be in ward for the lands of his wife, if he were within age, *&c.* in the life of the Husband: But it ſeemeth the Law is not now taken to be ſo.

Gardian in Socage did grant the Wardſhip over to a P ſtranger, and the grantee awarded, good. H. 26. E. 3. & H. 31. E. 3.

11 H. 7. 12. 12 H. 7. 20. 6 H. 4. 4. If an Infant enter for a condition broken upon a Feoffment made by his auncestour, he ſhall be in ward for that Q land if it be holden by Knights ſervice.

vide 2. & 3. Eliz. Dyer. 190. And a man or a woman ſhall have a Writ, *Why his*, &c. R *ſon and heir hath he raviſhed, or why his daughter and heir hath he raviſhed, or why his couſin and heir hath be married:* and that by the Common Law.

And the proces in a Writ of Ward appeareth by the Sta- S tute of *Marlebridge*, cap. 7. *viz.* Summons, Attachment, and Diſtreſſe.

And in a Writ of Right of Ward, if he cometh not at the Diſtreſſe, that the proclamation ſhall be awarded, that he ſhall have day by which two or three County Courts are holden in the mean time, before the return thereof; and if the Writ be returned ſerved, and he do not appear, he ſhall loſe the Wardſhip, and the plaintiff ſhall by Judgement recover the ſame.

Writ of Eſcheat.

THe Writ of Eſcheat lyeth where the Tenant who hath an eſtate in Fee-ſimple, or any lands or Tenements, and holdeth them of another, and the Tenant dyeth ſeiſed without heir General or Special, The Lord ſhall have the Writ of Eſcheat, againſt him who is Tenant of the lands or Tenements after the death of his Tenant, and by this Writ he ſhal recover the land, becauſe he ſhall have the ſame in lieu of his Services.

Founderſhip ſhall not Eſcheat nor be forfeited becauſe it is tyed to the blood. Alſo Rent charge ſhall not Eſcheat by death. contr. by ſtrainder, 24 E. 3. 22. Br. Eſcheat. 9 H. 7. 17. 7 E. 4. 11, 12. St Abby or Par ſh Church be diſſolved, the Lands which they held ſhall be Eſcheat. 21 H. 7. 19. If a man holdeth 2. Acres by ſeverall ſervices of one Lord, he ought to have 2. Writs of Eſcheat.

But if Tenant in tayl die without heir, he in the Reverſion ſhall not have a Writ of Eſcheat, but a Formedon in the Reverter.

A But if a man be Tenant in tayl of land, the remainder to his right heirs, and dyeth without heir, then the Lord of whom the lands were holden in tayl, ſhall have a Writ of Eſcheat, becauſe the Tenant in tayl was Tenant unto the Lord for the Fee-ſimple that he had in the Land, *&c.* [144] Tenant in tayl of a Sig. grants the ſame. Tenancy Eſcheats, Tenant in tayl dyeth without iſſue, he in the Reverſion ſhall have a writ of Eſcheat of the land, becauſe it is come in lieu of the Sig. 21 46 E. 3. 4. 33 E. 3. Eſcheat. 9. but by his opinion he ſhall not have Eſcheat becauſe the Reverſion was out of him at the death of the Tenant.

B But if a man be Tenant for life, the remainder in Fee unto a ſtranger and his heirs, and afterwards the ſtranger dyeth without heir, and afterwards the Tenant for life dyeth; The Lord ſhall not have a Writ of Eſcheat, becauſe the Tenant for life was Tenant to the Lord, and not he in the remainder, *&c.* But there the Lord ſhall have a Writ of Entruſion if a ſtranger enter in the land after the death of Tenant for life. 3 H. 2. Entr. 38. 7 H. 4. 17. contr. if the diſſeiſor dye or alien, for theſe are Tenants by title.

C And if the Tenant be diſſeiſed, and afterwards dyeth without heir, *&c.* it ſeemeth the Lord ſhall have a Writ of Eſcheat, becauſe his Tenant dyed in his Homage. And in that caſe he ſhall have a Writ of right of Ward, if the Tenant dye his heir being within age, and by the like reaſon he ſhall have a Writ of Eſcheat.

If

If the Tenant dyeth without heirs, and afterwards the Lord dyeth; The heir of the Lord ſhall have a Writ of Eſcheat for to recover the land, *&c.* for that Eſcheat made, and ſhall give a Right unto the Lord to have the land. D

46 E. 3. 4. the Son brought Eſcheat ſuppoſing that the Tenant held of his Father, whoſe heir he is, and exception taken, becauſe it ought to be, *quod de eo tenet.*

And this Writ ſhall deſcend from the Lord unto his heir, *&c.* And the forms of the Writs of Eſcheat are diverſe; One where the Tenant is a Baſtard, and dyeth without heir, and then the Writ is ſuch: E

The King to the Sheriff, &c. *Command* A. *that he render* B. *ten acres of land with the appurtenances in* N. *which* C. *of him held, and which to him to revert ought, as his Eſcheat, becauſe the foreſaid* E. *a Baſtard was, ad dyed without heir, as he ſaith*, &c.

And if he be not a Baſtard, but dyeth without heir, then the Writ is, *And which to him* B. *revert ought as his Eſcheat, becauſe the foreſaid* A. *dyed without heir: Or thus, becauſe the aforeſaid* C. *felony hath done, for which hanged he was, or for which outlawed he was, or for which thereat he abjured as he ſaith, and unleſſe*, &c. And the form of the Writs for the heir appear in the Regiſter. F

And the King ſhall have a Writ of Eſcheat for lands in *London*, if the Tenant dyed ſeiſed of lands there without heir, becauſe the lands in *London* are holden of the King. And this Writ he may ſue in the Kings Bench, or in the Common Pleas. G

Or if after judgment he be delivered to the Biſh. 34 E. 3. Eſcheat. 10. contrary if he ſtand mute. 4 E. 4. 18. 22 H. 6. 38. Newton, if a man go beyond Sea without licence and taketh wife there, and hath iſſue and dyeth, the land ſhall Eſcheat.

And if a man be beheaded for felony, or dye after Judgement, before that he be Executed by the Officer, yet the Writ ſhall ſay, *pro quo ſuſpenſus fuit*, &c. And it is not material whether that he be hanged or not. H

48 E. 3. 34. *Where the Tenant is Utlage of felony, the Lord hath Election to have a Writ of Eſcheat ſuppoſing that the Tenant was Utlage, or that he dyed without heir.*

And the courſe in the Regiſter was, that if a man were attainted of Felony, that the King did ſend a Writ to the Sheriff to enquire what lands and Tenements he had, and which he held of the King, and which of other landlords, and by what ſervices, and what they were worth by the year, *ultra reprizes*, and that he certifie the ſame. But the

ſame

ſame is altered by the Statute of 28. Eliz 3. Cap. 9. which is, That a Commiſſion be not made unto the Sheriff to take the Indictment. And alſo there was another Writ appointed by the Regiſter, directed unto the Sheriff to enquire whether ſuch houſe, or land which *W.* had, who was attainted of felony, were ſeiſed into the Kings hand for a year and one day or not, and of whom they were holden, and who had the year, day, and waſte, and ought to anſwer the King for the ſame, and that he ſend the ſame before the King, &c. And now in place of theſe writs, there ought to be a Commiſſion granted to enquire thereof, directed to certain perſons, by the Statute aforeſaid.

K And if a man be attainted of felony, and another entreth into the land, and taketh the profits, then if it be found by Commiſſion that ſuch a man who was attainted of Felony, had ſuch lands or Tenements, and that the Lands and Tenements have been in the Kings hands for one year and a day; and that *B.* hath taken the profits for that year and day; and alſo hath had the waſte thereof; and that the lands are holden of *F.* Then *F.* ſhall have a writ unto the Sheriff, for to deliver him ſeiſure of the lands, &c. *Saving the right of every man*, &c.

And he who hath taken the profits for the ſaid year and day, ſhall anſwer the King for the ſame. And thereby it appeareth that the King ſhall not have but the next year and day which cometh after the Attainder, and that he who took the profits for that year ſhall anſwer the King for the ſame.

L And if Lands be holden of an Abbot, and the Tenant dy without heir, &c. The Succeſſor ſhall have a writ of Eſcheat, and the writ ſhall ſuppoſe, *To him the now Abbot to revert ought, as his Eſcheat, becauſe the foreſaid, &c. dyed without heir, &c. as he ſaith, &c. and unlefs.*

M And the Tenant for life of the Signorie, ſhall have a writ of Eſcheat, or Tenant in Dower, or by the courteſie, and alſo the Lord ſhall have a Writ of Eſcheat of the Mealty, which is but a rent-ſervice, and ſhall demand the Rent by the Writ. 21 H. 6. 30. But by the Court. he ſhall ſuppoſe the Land was holden, 11. H. 4. 82.

And the King ſhall have a Writ of Eſcheat of tenements within Cities and Boroughs which are holden of him in Fee-farm.

And if a man have title to have a writ of Eſcheat, if he do not accept Homage of of the Tenant, he ſhall not afterwards have the Writ againſt him, becauſe he hath accepted him his Tenant. And ſo if he accept Fealtie of him; But if he do accept the Rent of the Tenant, that ſhall not bar him of his Writ of Eſcheat. And the proceſs are *Summons*, *Grand Cape* and *Petit Cape* as in other *Precipe quod reddat.* O

Writ of Covenant.

[145] WRits of Covenant are of diverſe natures; for ſome are meer perſonal, and ſome covenants are real to have a real thing, as lands and Tenements. As a Covenant to leavy a fine of land is a real Covenant. But a Writ of Covenant which is meer perſonal is; Where a man by deed doth covenant with another to build him an houſe, &c. or to ſerve him, or to enſeoff him, &c. and he doth not the ſame according to his Covenant, Then he with whom the Covenant was ſo made ſhall have a Writ of Covenant againſt him. And there is a Note in the Regiſter, which is this. *A Writ of Covenant ought not to be made according to law Merch, without a deed, becauſe no plea of Covenant can be without a deed, and every man ought to be judged according to his deed; and not by another law*, and the form of the Writ is ſuch. *The King to the Sheriff, &c. Command* A. *that &c. he keep to* B. *Covenant of damages and loſſes, by the infidelity, and default of* W. *the ſon of* R. *apprentice of the foreſaid* B. *within the term of ſix years done, to the ſame* B. *to be repaired, and unleſs, &c.* A B

And if a man make a Covenant by deed to another and his heirs, to enſeoff him and his heirs of the Mannor of D. &c now if he will not do it, and he to whom the Covenant is made, dyeth, his heir ſhall have a Writ of Covenant, upon that deed; and alſo his aſſign ſhall have a writ of Covenant where the Covenant is made to him and his Aſſignes. C

16 Eli. Dy. 337. Sir Anthony Cooks caſe.

And ſo Executors ſhall have a writ of Covenant of a Covenant made unto their Teſtators for a perſonal thing, and theſe writs appear in the Regiſter. D

And it appeareth by the Regiſter he may ſue a plaint of Covenant, in the County or in the hundred Court, &c.

And

And that he ſhall have a *Recordare* to the Sheriff for to remove the ſame out of the County into the Common Pleas, as it ſhall be done in a Replevin ſued there.

And if the plaint of Covenant be ſued in the Hundred, or in other Court of other Lord, he ſhall have an *Accedas ad Curiam* directed unto Sheriff, to remove the plaint into the Common Pleas.

F And the Writ of Covenant for Executors is ſuch, *Command I, that &c.* A. B. *and* C. *Executors of the Teſtament of* N. *the Covenant made betwixt him and* N. *and* W. *of* E. *of him* VV. *with the aforeſaid* N. *in the Manner of an apprentice for ſeven years to abide, and the ſame* N. *after that term compleated, for ſo much time as the ſame* VV. *within the ſaid term himſelf from the ſervice of the ſame ſhould Eloigne to ſerve, which Covenant to fulfill and maintain the ſame* VV. *by his writing himſelf oblig. and unleſs, &c. and the foreſaid Executor, &c.*

G And if a man make ſuch Covenant by word. Or to build him a houſe, &c. and he doth do it ill; then the party ſhall have an action upon the caſe for the ill doing of it.

If a man Covenant by word to do ſuch a thing for a certain ſum of money and receive the parcel of the money, and day is appointed for the payment of the reſt; Now if he do it not according to his Covenant, he ſhall have an action on the caſe againſt him for not doing of it, becauſe it is a bargain betwixt them.

H And a writ of Covenant lieth againſt Executors from a Covenant broken of the Teſtator, and the writ ſhall be. *Command A.* and *R. Executors of the Teſtament of* E. *that &c. keep to* VV. *and* A. *his wife, the Covenant made betwixt her A. and the foreſaid* E. *of that the ſame* E. *his heirs or executors ſhould make to* C. *the ſon and heir of I. when the ſame* C. *to his full age ſhould come, his reaſonable account, of all the Lands and Tenements which the aforeſaid I. held in the Town of* N. *in the County of* N. *the wardſhip of which the ſame* E. *had of the demiſe, which the foreſaid A. to whom the wardſhip of the Lands, and hæred. foreſaid belongeth becauſe the foreſaid I. that land held in Socage, and the ſame A. next was to the heir of him I. thereof made to the ſame* E. *&c. and unleſs &c. and by that Writ it appeareth that the Guardian in Socage may grant over his eſtate.* Ve 3 S.E 2. 2. 10 E.7 18. 32 H.6.31.

And if a man have lands for a term of years, and covenan- K
8 E. 3. Covenant 2. 40 E. 3. 5. teth to leave them in as good a plight as he found them; although that he pulleth down the houſes, the Leſſor ſhall not have an Action of Covenant before the end of the Term; for the Covenant hath relation thereunto, &c. But if he do waſt in Wood, Covenant lyeth, for he cannot repair it, E. 1. Covenant 29.

If a man make a Leaſe by deed poll, If the Leſſor put L
26 H. 8. 3. acc. out the Leſſee, he ſhall have a writ of Covenant upon the deed poll: But if a ſtranger who hath no right put out the Leſſee, he ſhall not have a Writ of covenant againſt the Leſſor, becauſe he hath remedy by action againſt the ſtranger: But if the ſtranger enter by eiſne title upon the Leſſee, then he ſhall have an action of Covenant againſt the Leſſor, becauſe he hath no other remedy.

And in a writ of *Covenant* brought by the Leſſee againſt M
38 E. 3. 24. *Skypwith & Knevyt.* he ſhall recover damages only. 42 E. 3. 2. the Leſſor, if the term be not expired, he ſhall recover the term again if he have put him out; But if a ſtranger put him out by eiſne title, then he ſhall recover all in damages againſt the Leſſor. And the ſecond Leſſee ſhall have a writ of Covenant againſt the Leſſor, if the Leaſe be made to him and his aſſignees with warranty.

He ſhall recover his term. 20 E. 3. covenant 2. 22 Ve. 9. El. Dyer 257. [146] And if a man Leaſe lands for life by deed, and afterwards putteth him out, the Leſſee ſhall not have a writ of *Covenant* againſt him, but an Aſſiſe: But if he grant by the deed That if a ſtranger by eiſne title, that then he ſhall have a writ of Covenant thereupon; now upon this ſpecial matter he ſhall have a *Writ of Covenant*, otherwiſe not. *quod ve.*

27 H. 6. Covenant 11. 17 H. 6. 10. *Trin.* 26 H. 6. A

And in *London* a man ſhall have a *Writ of Covenant*, without a deed for the covenant.

40 E. 3. B

And a man ſhall have a *Writ of covenant* againſt the Sureties who became Sureties, or gave ſecurity that a man ſhould perform ſuch Covenants, &c.

42 E. 3. 1. *Finchden.* If the Covenant go with Land the Aſſignee ſhall have Covenant without being named. As two Coparceners, one covenanteth to diſcharge the party of the other, the allience ſhall have Covenant. C

And the Aſſignee of the Leſſee ſhall maintain a *Writ of Covenant* againſt the Leſſor, although there be not any aſſignee mentioned in the deed of Covenant.

D Alſo Adminiſtrators ſhall have a Writ of Covenant as well as Executors.

E And the writ of Covenant ought to be brought where the Covenant was made; But if he bring it in another County, The party ſhall not plead the ſame to abate the Writ, unleſs the deed bear date in another County; and ſo the title of Covenant in the abridgements were at large for that matter. 26 H. 6 covenant 9. although the deed bear date in other County, yet the Writ lieth where the land is.

Covenant to levy a Fine.

F THere is another manner of Covenant, which is more in the realty. And that Writ properly lyeth where a man by deed granteth to another to levy a fine to him and his heirs of certain Lands and Tenements, he to whom the grant is made ſhall have a Writ of Covenant againſt him to levy a fine of that land, &c. and the form of the Writ is ſuch,

The King to the Sheriff, &c. Command A. &c. that &c he keep to B. his covenant betwixt them made of the Mannor of N. with the appurtenances. Or thus. *Of one meſſuage, and one acre of Land with the appurtenances in N. &c. and unleſs &c.*

And the form of the particulars in that writ, ſhall be uſed as the form is, as in a *Precipe quod reddat* of land; to put the particulars in the ſaid Writ. 46 E. 3. 4. 47 E. 3. 3.

G And if he who ought to levy the fine, and make the Conuſance; cannot come for ſickneſs or other reaſonable cauſe into Court, then he may ſue a Writ of *Dedimus Poteſtatem*, directed unto ſome Iuſtice, that he go to him to take the couuſance, and to certifie the ſame to the Iuſtices of the Common Pleas, and the writ of Covenant ought to be ſued before the *Dedimus poteſtatem* be returned in the Common pleas; and the *Dedimus poteſtatem* ought to recite that the Writ of covenant is depending in the Common pleas before the Iuſtices; and the writ ſhall be ſuch.

The K. to his beloved, and truſty W. R. Kt. greeting. Whereas our Writ of Covenant hangeth before you, and your Companions our Juſtices of the Bench, betwixt A. and B. and C. his wife of one carue of Land, with the appurtenances in N. a fine thereupon betwixt them before you, and your Companions fore-

ſaid according to Law and Cuſtom of our Realm foreſaid to levy, and the foreſaid A. B. *and* C. *ſo impotent are, that without great danger of their bodies to* Weſtminſter *at the day in the Writ foreſaid contained, the recognizances which in this part are required to be made, to travel they are not able, We the eſtate of the ſame* A. B. *and* C. *compaſſionating in this part, have given you power to receive the cognizances which the foreſaid* A. B. *and* C. *before you will make in the premiſes, and therefore we command you, that to the aforeſaid* A. B *and* C. *perſonally you going, their recognizances foreſaid ye receive, and when thoſe ye ſhall have received, the foreſaid Companions thereof diſtinctly and openly you aſcertain, That then that fine betwixt the parties foreſaid in the ſame Bench levied may be, according to Law and Cuſtome foreſaid, and have there then this Writ, witneſs &c.*

And if the *Dedimus poteſtatem* be made unto any Juſtices of the Kings Bench, then the form of the writ is ſuch.

The King to his beloved, &c. W. *our Chief Juſtice.* Or thus, *Our Juſtice &c. Whereas the Warden of the houſe of the Vicaridge of the Church of bleſſed* Peter *of* York, *hath brought our writ of Covenant againſt* H. *Knight of the advowſon of the Church of* F. *a fine thereupon betwixt them before our Juſtices of the Bench according to Law and Cuſtome of our Realm to levy, and the ſame Warden and* H. *ſo impotent &c. to there, and when thoſe ye ſhall receive, our foreſaid Juſtices thereof under your ſeal diſtinctly, and openly aſcertain, that then that fine to there, according to Law and Cuſtome foreſaid, ſend to the ſame Juſtices this Writ witneſs, &c.*

And if a man have diverſe Writs of Covenant depending againſt ſeverall perſons in ſeveral Counties, &c. he may have one Writ of *Dedimus poteſtatem* directed to one Juſtice to take their Conuſances ſeverally, and to certifie them, &c. And the form of the Writ is ſuch:

The King, &c. Whereas our Writ of Covenant hangeth before you, and your Companions our Juſtices in the Bench betwixt J. *and* E. *of the Motty of the Mannor of* N. *with the appurtenances and other our Writ of Covenant hangeth before you, and your Companions foreſaid, betwixt him* E. *and the aforeſaid* I. *of one meſſuage &c. and ſoof others, &c. the fines thereupon betwixt them, &c.* as above.

And

And if a man ought for to levy a fine, and he is going in the Kings ſervice, then he ſhall have a *Dedimus poteſtatem* directed unto the Juſtices, to take his conuſans. And ſo of a woman who is with child; and the Writ ſhall mention the ſame, thus;

The King &c. whereas our writ &c. to there the fine &c. and the foreſaid W. at our command our ſervice elſewhere intendeth. And the aforeſaid J. with child is and big, and the foreſaid B. languiſhed and impotent is, by which the aforeſaid VV. at VVeſtminſter at the day in the writ contained, come cannot, and the aforeſaid J. and B. at the ſame day and place to travel is not able, the cognizances &c. we to the ſame VV our grace ſpecial willing to do in this part, have given, &c.

[147]

A And if he in the reverſion will levy a fine of his reverſion unto another upon a writ of Covenant ſued forth againſt him, the conuſans ſhall be taken in the Common Pleas, but the fine ſhall not be engroſſed untill the Tenant for life hath attorned; and the fine is ſaid engroſſed, when the Chirographer maketh Indentures of the fine, and delivereth them to the party to whom the Conuſans is made, and then it is ſaid that the fine is engroſſed, and after that the Conuſee ſhall not have a *Quid juris clamat* againſt the Tenant for life; But the courſe is, when he in the reverſion upon the Writ of Covenant ſued againſt him, maketh the conuſans of the reverſion by fine, &c. then upon that the conuſee ſhall have the *Quid juris clamat* againſt the Tenant for life; and if the Tenant for life be ſo weak that he cannot travel, then he may ſue a *Dedimus Poteſtatem* directed to the Juſtices to take his Conuſans, &c. and to certifie the ſame into the Common-Pleas.

And the like writ of *Dedimus Poteſtatem* ſhall be granted, where the Lord by fine granteth the ſervices of his Tenant unto another upon a VVrit of Covenant ſued againſt him, If the Conuſee ſue a *Per quæ ſervitia* againſt the Tenant, Then if he be weak, or ſick, he may ſue a *Dedimus poteſtatem*, to take his Conuſans, &c. and to certifie the ſame, &c. But now the courſe is for to admit the defendant in a *Quid juris clamat*, or *Per quæ ſervitia*, to make attorney after a plea pleaded; and that eſpecially where he pleadeth ſuch a plea, that he ſhall forfeit his

eſtate if it be found againſt him, &c. then it is clear, That he ſhall make atturney after the plea pleaded; and the courſe is now to make atturney after pleading. And if he be adjudged to attorn, to award a *Diſtringas ad attornandum* againſt him, &c.

And if a man hath a writ of Covenant againſt one to levy a fine, and thereupon a *Dedimus poteſtatem* directed to a Judge to take the Conuſans of the party, and the Judge doth take the Conuſans by force of the writ, and will not certifie the ſame into the Common Pleas, then the party may ſue out a *Certiorari* directed to the ſame Judge, reciting all the matter, how he hath taken the Conuſans, commanding him by the writ to certifie the ſame into the common Pleas; And upon that an *Alias* and *Pluries*, and attachment to the Judge, if he will not certifie it or return it, or ſhew cauſe why he do not certifie it. And if the Judge be dead who took the Conuſans, he may have a *Certiorari* to his Executors, and an *Alias* and *Pluries*, and attachment, *vel cauſum nobis ſignifices*: and in the end of the writ ſhall be this clauſe; *Have there this writ by which the cogniſances aforeſaid ye received, and this Writ, For we command our Juſtices of the Bench aforeſaid, that the cogniſances and writs which under the ſeal to them ye ſend, thoſe they receive, witneſs, &c.* and by that it appeareth, That although the *Certiorari* be ſent to the Judge to return the conuſans taken before the Juſtices of the Common Pleas, That yet he ought to ſue forth another writ to be ſent and directed unto the Juſtices of the Common Pleas, to receive ſuch Conuſans taken, And the Writ of *Certiorari* which ſhall be directed unto the Juſtices of the Common Pleas to receive the Conuſans, are in the Regiſter amongſt the Writs of Covenant. B

And if a man will levy a fine of Lands holden of the King in chief, then he ought to have a ſpecial Writ unto the Juſtices of the Common Pleas; thus: C

The King to his Juſtices of the Bench, greeting, Whereas by our Letters Patent of our grace ſpecial, we have granted to J. that he of his Mannors of N. and I. may enfeoff W. &c. reciting the Charters unto them; As in our Letters foreſaid more fully is contained, and our Writ of Covenant hangeth before you in the Bench aforeſaid, betwixt the aforeſaid I. and W. of the Mannors aforeſaid, a fine thereupon betwixt them according

to

to Law and Cuſtome of our Realm to levy, as we have received, We command you that that fine betwixt the parties foreſaid, of the Mannors foreſaid before you in the ſame Bench to be levied ye permit, according to the tenour of our Letters foreſaid.

D And if it do appear unto the Court that the Lands are holden of the King in *Capite*, the Court *ex Officio* ought not to ſuffer ſuch fine to be levyed without ſuch a Writ directed unto them, declaring the kings pleaſure.

And there is another writ of *Certiorari* directed unto the Treaſurer and Chamberlains of the Exchequer, to certifie the tranſcript of a fine in the Chancery; and a writ of *Mittimus* out of the Chancery directed to the Juſtices of the Common Pleas, to tranſcript the ſaid fine, &c.

And another form of Writ of *Certiorari*, directed unto the Chirographer, to certifie into the Chancery *tenorem cujuſdam notæ in cur. Domini E. nuper regis Angliæ, &c.* as appeareth in the Regiſter.

Writ of Dower unde Nihil habet.

E A Writ of *Dower unde Nihil habet*, lyeth in caſe where a woman taketh a husband who is ſole ſeiſed of Lands or Tenements to him and his heirs in Fee-ſimple, or unto him and the heires of his body, &c. Or if the Husband during the marriage betwixt him and his wife, be ſoly ſeiſed in Fee-ſimple, or in Fee-tail of ſuch eſtate, that the iſſue begotten betwixt him and his wife may inherit the ſame, Then if the Husband doth alien the ſame, or dyeth ſeiſed thereof, or be thereof diſſeiſed, and dieth, his wife ſhall have a writ of *Dower unde nihil habet* againſt him who is tenant of the Freehold of the land, or againſt him who is Guardian in Knights ſervice of the Land; and the form of the writ is, [148]

29 Aſſ. 68. *Br. Dow.* 63 Dower lyeth not againſt Cnardian in Socage, and therefore it is doubted if ſuch a Guardian ſhall aſſign Dower if there be a diſſeiſin.

A *The King to the Sheriff, &c. Command* A. *that juſtly &c. be render to* B, *which was the wife of* C. *her reaſonable Dower which her is conting. of the frank tenement which was of the foreſaid* C. *ſometime her husband in* N. *whereof ſhe hath nothing*

thing as ſhe ſaith, and whereof ſhe plaineth that the foreſaid A. her deforceth, &c. and unleſs &c.

And againſt the Guardian the writ is ſuch. *Præcipe* A. *Cuſtod. terræ & hæredis* J. *quod reddat &c.* B. *quæ fuit uxor.* C.

Otherwiſe where the wife is endowed *ad oſtium Eccleſiæ*, thus; *Command A. that he render B. which was the wife of C. ten acres of Land with the appurtenances in N. of which the foreſaid C. ſometimes the husband of her B. her endowed at the Church door when her he eſpouſed, whereof nothing ſhe hath, &c.*

And if ſhe be endowed *de aſſenſu Patris*, then thus; *Command A. that he render B. which was the wife of C. one hundred acres of Land &c. in which the foreſaid C. ſon and heir of him A. ſometime the husband of her B. of the aſſent, and will of him A. his father, her endowed at the Church door, &c. whereof, &c.*

Pach. 67. 68. common ſans numb. & eſtovers. Old Na. Br. 5. 2 E. 3. Dow. 123.

And the writ of Dower *unde nihil habet*, may be ſued in B the County before the Sheriff by a *Juſticies*.

And a wife ſhall be endowed of Advowſons, Villeynes, C Commons of paſture, and of other profits, or liberties, of which her Husband had any eſtate of Inheritance; which eſtate the iſſue betwixt them by poſſibility may inherit, &c.

And the wife may ſue a Writ of *Dower* of Lands or Te- D nements in *London*, and the Writ ſhall be directed unto the Mayor and Sheriffes of *London*, and the writ ſhall be ſuch.

The K. to the Mayor and Sher. of London greeting. We command you that ye Juſtice A. that juſtly, and without delay, and according to Cuſtome of our City of London, *ye render to B. which was the wife of C. her reaſonable dower which to her is contingent &c. in* London, *and Juſtice* D. *that juſtly &c. and according to cuſtome &c. he render to the ſame* B. *her reaſonable Dower &c. in the ſame City whereof nothing ſhe hath &c. as ſhe ſaith, and whereof ſhe plaineth, that the foreſaid* A. *and* D. *her deforce, as reaſonably ſhow ſhe can, that to her render they ought, that no more, &c. witneſs &c.*

And by that it appeareth, That a woman ſhall have a writ of Dower in *London* againſt ſeveral Tenants by ſeveral *Juſticies* in the Writ, as well as ſhe ſhall have a writ

of

of Dower againſt ſeveral Tenants by ſeveral *Præcipes*, and all in one writ. And the proceſs in Summons, *Grand Cape & Petit Cape* in the Common Pleas.

Writ of Admeaſurement of Dower.

F THe *writ of admeaſurement* of *Dower* lyeth, where the heir when he is within age endoweth the wife of more, then ſhe ought to have Dower of: Or if the Guardian endow the wife of more then of the third part of land of which ſhe ought to have Dower, Then the heir at his full age may ſue this writ againſt the wife, and thereby ſhe ſhall be admeaſured; and the ſurpluſage which ſhe had in dower ſhall be reſtored to the heir; but in ſuch caſe there ſhall not be aſſigned anew any land to hold in dower, but to take from her ſo much of the land which amounteth above the third part of all the land of which ſhe ought to be endowed.

And if the heir within age before the Guardian enter into the land, do aſſign to the wife more land in Dower then ſhe ought to have, then the Guardian ſhall have the VVrit of *Admeaſurement* againſt the wife by the Statute of *Weſt.* 2. cap. 7. And if the Guardian bring the writ and do purſue it againſt the wife; yet the heir at his full age by the ſame ſtatute ſhall have the *writ of Admeaſurement of Dower* againſt the wife.

And the writ is *vicontiel*, and ſhall be ſued in the Coun-G ty before the Sheriff; and the writ is ſuch.

The King to the Sheriff, &c. Plained hath to us. A the ſon and heir of B. that C. which was the wife of the foreſaid B. more hath in Dower of the Franktenement of the foreſaid B. which was ſometime her husband in N. *then to have ſhe ought, and to her it belongeth to have, and therefore thee we command that juſtly &c. and without delay to be admeaſured thou cauſe that dower, ſo that the foreſaid C. may not have more in Dower of the inheritance of the foreſaid A then to have ſhe ought and to her belongeth to have, according to her reaſonable Dower, and let the aforeſaid A. have of that Dower, that which to have ſhe ought, and to her belongeth to have, that no more, &c. Witneſs, &c.*

And

And for the Guardian the Writ is such. *Plained hath to us* A. *Guardian of the land and heir of* C. *that* C. *which was the wife of the foresaid* E. *more hath in Dower of him, &c. unto so that, the foresaid* C. *have not more in Dower of the inheritance of the aforesaid heir, then he ought to have, &c. and that the foresaid Guardian may have of that Dower &c. that no more &c. witness &c.*

And when the plea is in the County, the plaintiff may remove it without cause; and the defendant may remove it with cause in the Writ, as in a Replevin. And if the writ be removed in the Common Pleas by a *Pone*, and proceeds be awarded against the defendant according to the Statute, which is Summons, attachment, and distress, &c. Then the Sheriff cannot make the Admeasurement, but to extend all the land particularly; and to return the same into the Common Pleas, and thereupon the Admeasurement shall be made by the Justices. H

And if the Guardian assign for Dower, &c. more then she ought to have, and afterwards grant over his estate, his assignee shall not have a writ of *Admeasurement*. I

[149] And so if the heir within age assign unto the wife more in Dower then she ought to have, &c. the Guardian in Right may have a writ of Admeasurement, but if he grant over his estate, his assignee who is Guardian in Fait shall not have the writ, because it was a thing in action given to his Lessor, &c. and the heir shall have a writ of *Admeasurement of Dower*, for Dower assigned in the time of his ancestor.

Parkins 19 d. 7. H. 2. Admeasurement 4

And if a woman be endowed in Chancery by the King, &c. the heir shall have a writ of *Admeasurement* against her, if she have more assigned unto her for her Dower then she ought for to have. A

12 H. 6. Admeasurement 9

And if the Guardian do assign Dower more then she ought to have; the heir during his non-age shall not have a Writ of Admeasurement, but if he himself assign more for Dower then she ought to have, &c. then it seems reasonable, that he himself during his non-age have the writ of *Admeasurement* of Dower. B

7 E. 2. Admeasurement 13.

But if the wife after the assignment of Dower do improve the Land, and make it better then it was at the time of the assignment; an Admeasurement doth not lye of that

that improvement. But if the improvement be by caſualty of a Mine of Coals or of Lead, which are in the land, &c. which have been occupied in the Husbands time, the doubt is the more, but ſhe cannot dig new Mines; for that ſhall be waſt if ſhe ſo do.

D And if the Anceſtor dieth ſeiſed, and the Husband dye before he entreth into the Land, yet the wife ſhall be endowed, although her husband had but a poſſeſſion in Law.

But a man ſhall not be Tenant by the curteſie of the wives land, if his wife had not a poſſeſſion in deed, if it be not in ſpecial Caſes; as of Advowſon, or Rent, where ſhe dyeth before the day of payment of the Rent. Parkins 89. 3 H. 7. 5. 21 E. 3. 21.

And in that caſe if the Kings Tenant dy ſeiſed, and the heir die before he enter; then the wife ſhall be endowed.

But if the heir enter and intrude upon the Kings poſſeſſion, and afterwards dye before he ſueth his Livery; The wife ſhall not be endowed by the Statute of *Prerogativa Regis*, cap. 12. which is, That if the heir intrude upon the Kings poſſeſſion, that *Nullum accreſſit ei liberum tenementum &c.* 1 H. 7. 17. 4 H. 7. 1.

E Where a woman taketh a Leaſe for years of Land; ſhe ſhall not be endowed of the ſame land during the Term. 2 H. 4. 7. Parkin 69.

F And where the eſtate which the Husband hath during the marriage is ended, there the wife ſhall loſe her Dower. As if Tenant in tail do diſcontinue in Fee, and afterwards taketh a wife and diſſeiſeth the Diſcontinuee, or the Diſcontinuee doth enfeoff him, and afterwards the Tenant in tail dyeth ſeiſed, his heir is remitted, and the wife ſhall loſe her dower, becauſe the heir is in of another eſtate of Inheritance, then the Husband had during the coverture. d.

And ſo if a man have title of Action to recover any Land, and afterwards he entereth and diſſeiſeth the Tenant of the land, and dyeth ſeiſed, and his heir entreth, The heir is remitted unto the Title which his Anceſtor had, and the husbands wife ſhall loſe her dower; for that eſtate which the husband had is determined, for that was an eſtate in Fee by wrong, and the heir hath the eſtate in which his anceſtor had by Right.

If a man make a gift in tail, reserving rent to him and G
10 E. 3. Avowry. 159. his heirs, and afterwards the Donor hath a wife, and the Tenant in tail dyeth without issue, The wife of the Do-
Park. 63. d. nor shall not be endowed of the Rent, because the Rent is extinct, for it was reserved upon the estate tayl which is
26 E. 3. 24. Finchden. ended: But although that the Tenant in tayl dyeth without issue, yet his wife shall be endowed, because the land continueth and is not determined as the Rent is.

If the Grand-father dieth seised, and after, the Father H
Park. 62. 45 E. 3. 13. dyeth seised, and the Son hath the Land, and then the wife of the Grandfather is endowed of the third part of the land and dyeth, yet the wife of the Father shall not have Dower of that third part, because *dos ex dote peti non debet.*

And if the Husband be Tenant in Common with two I other in Fee of certain lands, and dyeth, his wife shall be endowed of the third part of that land, onely meets and bounds to hold in Common, &c.

And if a wife be endowed of a Mill, or of an Office, she K
45 E. 3. Dower 50. 2 H. 5. 1. Park. 67. g. shall have the third part of the profits thereof assigned unto her, and she shall have a Freehold in the third part of the Mill, &c. M. 45. E. 3.

Litt. 8. 12 H. 4. 1. *Dr.* & Stud. 13 A woman of the age of 9. years or more at the death of L her Husband shall have Dower of his land. And if she be of less age at the death of her husband, then she shall not have dower.

If a woman be endowed, and afterwards loseth by acti- M on tryed, if she pray in aid of him in the Reversion, she shall be new endowed of that which remaineth.

If the husband exchange land &c. and afterwards dieth N if the wife have Dower of the third part of the Land taken in exchange, she shall not have Dower of the other land, &c. which was given in Exchange.

If a woman be Guardian in Socage, and she bring a writ O of dower against a stranger, he may plead, That she holdeth other Lands in Socage of which she may endow her self, *de le plus beale*, and then the wife upon that may endow her self of those lands unto the value of the third part which she ought to have of the other lands which the Guardian holdeth, &c. And whether she may endow her self of the *plus beale* unto the value of the third part which she ought

ought to have of all her husbands Land or no, *Quare*; for some hold, That Dower *de pluis beale*, shall endure but during the minority of the heir who is in Ward. *Litt.* 10. d. That he hath a free hold.

A The son would have endowed his wife, of a Reversion of land which one held for life, *ex assensu patris*; and it was holden, that it was not good, *M.* 4. *E.* 3. because it was not in possession; whereof a right of Dower may be claimed. [150] 45 E. 3. 6. Cand. ac. to this here.

B And the Writ of Dower *ex assensu Patris* lyeth as well against the Guardian, as against the Tenant of the Freehold. 22 E. 3. Dow. 131. Park. 64. a.

C If the Tenant for judge the *Mesne*, yet the wife of the *Mesne* shall be endowed.

D If a man recover in value against the Husband by a warranty *Auncestrel*; yet the wife shall be endowed, because the same is by force of the warranty made, and not by reason of Eigne Title to the land. 5 E 3. Dow. 129.

E The younger son shall not assign Dower to his wife *ex assensu Patris* of the Fathers land, because he is not heir apparent.

F If the husband enter into Religion, the wife shall not have Dower, during his life. Park. 68. a 13. E. 2.

G The wife shall have the third part of the Advowson for her Dower. Dow. 161.

H If the wife do elope from her husband, and remain with the Adulterer she shall lose her Dower; But if she remain in Adultery upon the husbands lands or Tenements, she shall have Dower, because the same is not an Elopement. 43 E. 3. 19. Park. 70. b.

I If the husband be attainted of Felony by Outlawrie or otherwise, she shall lose her Dower.

K If one Jointenant make a Feoffment of his part, his wife shall not be endowed because her husband was never sole seised. 3 H. 4. 6. Lessee for life maketh a Feoffment in fee, his wife shal have Dower against the feoffee, but not against the Lessor.

L Dowment *ex assensu matris* is good; but *ex assensu fratris*, it is holden it is not good.

And Dowment *ex assensu patris* after the marriage is good.

M If a man marry a woman in a Chamber Dowment *ad ostium Camere* is not good.

N Dowment *ad Ostium Ecclesiæ* of the moity of the Land, is good.

And a woman married in a Chamber shall not have Dower by the Common Law, H. 16 *H.* 3. *Quare* of marriages made

made in Chappels not conſecrated, &c. for many are by Licence of the Biſhop married in Chappels, &c. And it ſeemeth reaſonable, That in ſuch caſes ſhe ſhall have Dower.

And in ſome places the wife ſhall have the Moity in O Dower; as in Gavelkind.

And in ſome Cities ſhe ſhall have all by the Cuſtome P which is called Free-bench, &c. And *Glanvill* ſaith, That *ad oſtium Eccleſiæ*, a man cannot aſſign more then the third part in Dower, and if he do the wife ſhall be admeaſured, &c. but leſs may be aſſigned by Law; yet at this day it ſeemeth, That the aſſignment *ad oſtium Eccleſiæ* of more then the third part is good, and ſhe ſhall not be admeaſured for it.

And the wife ſhall not be diſtreined in the lands which Q. ſhe holdeth in Dower, for the debts of the Husband in his life due to the King, nor in the lands of inheritance of the wife, nor in the lands which ſhe hath by purchaſe made by the husband to him and his wife, and unto their heires; And if ſhe be diſtreined by the Sheriff, ſhe may ſue forth ſuch Writ.

The King to the Sheriff, &c. Whereas according to Law, and Cuſtome of our Realm, Women in Lands and Tenements which they have in Dower, of the gift of their husbands, or which are of their Inheritance, or to them by purchaſe, for the debts of their husbands to be rendred diſtreined ought not to be, and thou B. *which was the wife of* A. *diſtreineſt in her Lands, and Tenements which ſhe holdeth in Dower of the gift of the aforeſaid* A. *and alſo which were of the Inheritance of her* B. *as from her plaint we have received, we command thee that her* B. *in the Lands and Tenements which are held in Dower, or are of her Inheritance proper, or of the purchaſe of her* B *for the debt of him* A. *ſometime her husband to be rendred thou diſtrein not, or to be diſtreined cauſe, againſt Law, and cuſtome foreſaid, and the diſtreſs of any &c. to her to be redelivered cauſe thou, &c. witneſs, &c.*

There is another form of Writ in the Regiſter for Tenant in Dower, which is directed unto the Sheriff, commanding him that he do not diſtrein the wife in thoſe lands which ſhe holdeth in Dower, or of her own Inheritance for the Husbands debt; but that Writ hath theſe words in the end of the Writ, *Dum tamen hæredes & exe-*

cutores

cutores teſtamenti ipſius A. *ad debita illa nobis reddend. ſufficiunt nin diſtr. &c.* And by theſe words in the Writ it ſeemeth, That if the heir or the Executors have not ſufficient of Lands or Goods to pay the debt, that the wife ſhall be charged and diſtrained for the debt of the husband in thoſe Lands. But it ſeemeth reaſonable that the wife ſhall not be charged or diſtrained for the joynt purchaſe made to her husband and her, nor for her Lands of Inheritance, nor in the Lands wherein ſhe hath Title of Dower, before the Husband become indebted to the King: And that the firſt Writ is according to the Law for thoſe caſes; but if the husband be indebted unto the King, before ſhe have Title of Dower, it ſeemeth to be otherwiſe.

And there is another Writ in the Regiſter for the wife, directed to the Sheriff, that he do not diſtrein her in Lands or Tenements which her husband and ſhe purchaſed joyntly before the husband was indebted to the King, if they purchaſe the Land joyntly to them in Fee, the Lands after the death of the husband in the hands of the wife and her heirs ſhall be diſcharged of the debt, and if ſhe be diſtrained that he deliver them again to the wife.

And by the ſame reaſon, although the husband be before indebted to the King, that if he and his wife purchaſe the Land joyntly in Fee to them, that after the death of the husband, the wife and her heirs be diſcharged of that debt. And there is another Writ in the Regiſter, for the Tenant in Dower, directed to the Sheriff, that he do not diſtrain the wife for the husbands debt, becauſe that the heir who ought to pay the ſame out of the Lands is within age, and in ward to the King. Or becauſe that other Tenants ſhould be charged with the payment thereof, are omitted. [151] V. 50 Aſſ. 3. Bro. Charge 34.

And ſo it ſeemeth the Lands of the Tenant in Dower ſhall be diſcharged, if there were other Lands of the husband to pay the debt. And thoſe Writs appear in the Regiſter, *Fol.* 142, 143. The Husband-wife before marriage purchaſe a Leaſe by years, the husband dyeth, the Leaſe extended for the things debt.

A And another Writ directed to the Sheriff, that he do not diſtrain the wife who holdeth Lands in Dower for the debts of the husband, which he owed the King before the contract of marriage between him, and the wife, nor the Lands which the husband and wife purchaſed joyntly in Fee for the husbands debts which he became debtor for

before the purchaſe. And ſhe may have ſuch Writ out of the Chancery directed unto the Treaſurer and Barons of the Exchequer, commanding them that they enquire thereof; and if they finde the ſame, that they ſurceaſe and diſcharge the wife with this Proviſo in the Writ. *Provided, That thoſe debts of the Executors of, and heirs of* A. *and Tenants of the Lands which his were, and which wherefore ought to be charged to our uſe, to be levied, as juſt it is. Witneſs, &c.*

Writ de Conſuetudinibus & ſerviciis.

THe Writs of Cuſtoms and Services, is in its nature a Writ of Right, and lieth ſometimes for the Lord, who hath a Fee in the Seigniory, and ſometimes for the Tenant in Tail of the Seigniory, or for Tenant in Dower, or Tenant for life, or for him who hath a leſs eſtate then a Fee, and the Writ is cloſe and not Patent, and ſhall be directed unto the Sheriff, and ſhall be retornable ſometimes into the Common Pleas at the pleaſure of him who ſueth the Writ. And that Writ may be ſued in the County before the Sheriff by a *Juſticies*. B

And the Writ lieth where the Tenant doth deforce the Lord of the Services which he ought to do, or of the Rent which he ought to have, as well as of Service. And the form of the Writ which is retornable in the Common Pleas, is: C

The King to the Sheriff, &c. Command A. *that, &c. he do to* B. *the Cuſtom and Services which to him he ought to do, of his Frank-tenement, which of him he holdeth in* C. *as in Rents, Arearages, and other things. Or thus, in Homage, Reliefs, and other, &c. Or thus, in Suits of Court, and other things, and unleſs, &c.* D

And if the party were not ſeiſed of the Services and Tenements which he claimeth, but his Anceſtor, then he ſhall not ſay in the Writ, *Ut in arreragiis, &c.* but omiſſion ſhall be made in the Writ of the Services.

And if the Writ be ſued in the County before the Sheriff, then the Writ is ſuch. E

The King to the Sheriff, &c. Juſtice A. *that, &c. his Cuſtom and Right Services, &c. as above, as reaſonably ſhew he can that, &c. that no more, &c.*

And a man may ſue ſeveral Tenants by one Writ of Cuſtoms

Cuſtoms and Services by ſeveral *Præcipes* in the Common Pleas, or by one Writ and divers *Juſticies*, in the Writ which ſhall be directed unto the Sheriff to hold plea upon them. But if the Writ of Cuſtoms and Services be ſued againſt ſeveral Tenants by ſeveral *Præcipes* in the Writ, and returned into the Common Pleas, then all the *Præcipes* ſhall be put together thus. *Command* A. *that he do to* B. *&c. And command* C. *that he do to* D. *&c. And command* F. *that he do to* G. *&c.* And in the laſt *Præcipe* ſhall be put this clauſe, *In Rents and other things, &c.* and this word *Arrearages* ſhall be left out.

G And when the Writ is in the Right onely, then he ſhall count of the Seiſin of his Anceſtor, and the Writ onely in the *Debet*; but when he count of his own Seiſin, then the Writ is in the *Debet & ſolet, &c.* 2 E. 2. Fitz Droit 28.

H And Diſclaimer lieth for the Tenant in this Writ againſt the demandant. N. B. 28. The Diſclaimer ought to be in a Court of Feud, and not in the County.

I And note, that if he ſay in the Writ, *Ut in redditibus & arreragiis*, that thoſe words prove that the Demandant himſelf was ſeiſed of the Services, and then if he count in ſuch Writ of the Seiſin of his Anceſtors, and not of his own Seiſin, the Writ ſhall abate. *Quod vide 1. Eliz. 1. Title Droit.*

But if he will bring a Writ of Cuſtoms and Services of the Seiſin of his Anceſtors, he ought to leave out thoſe words out of the Writ, *Ut in redditibus & arreragiis, &c.*

K And a Writ of Cuſtoms and Services doth not lie againſt Tenant in Frank-marriage, until the fourth degree be paſt, *&c.* if not, that he hath done Homage to the Lord, *&c.* for by ſo doing he is concluded, *&c.*

L And if a man will bring a Writ of Cuſtomes and Services againſt any Tenant, and by his Count demand Homage, then the Writ ought to make ſpecial mention thereof, or as to ſay, *Ut in Homagio, &c.* otherwiſe the Writ ſhall abate.

M And if a man holdeth divers Manors in ſeveral Counties by one Service, *&c.* if the Lord be deforced or kept from his Services, he ſhall have ſeveral Writs of Cuſtoms and Services for each County one Writ, and ſhall have them returned at one day in the Common Pleas, and then he ſhall count upon them, as his caſe is, which ſee in the Title of *Droit*, 30 E. 1.

And note, that this Writ is a *Præcipe quod faciat, &c.* and where he demandeth Land, then the Writ is *Præcipe quod reddat, &c.* And in this Writ the miſe ſhall be joyned, if the Writ be brought Tenant in Fee of the Tenancy by him who hath a Fee in the Seigniory. But if the Writ be brought by Tenant in Dower, or Tenant in Tail, againſt the Tenant in Fee-ſimple, it is a queſtion how the miſe ſhall be joyned. But I think the miſe ſhall be joyned in that caſe, and the weakneſs of the eſtate on the part of the Demandant ſhall not out the Tenant of the Plea, which the Law giveth him to joyn the miſe; but if the Writ be
152 brought againſt Tenant for life, where the Remainder is over in Fee, there the Tenant may pray in aid of him in the Remainder, and then they may joyn the miſe with the Demandant, *&c.* But where the Demandant, who hath the particular eſtate, bringeth the Action, although he pray in aid of him in the Reverſion to joyn the miſe, it is hard to be done, *&c.* But it ſeemeth reaſonable, that the ſame Law which enableth him to bring the action, the ſame Law ought to enable him for to joyn the miſe upon the plea of the Tenant.

Writ of Annuity.

A Writ of Annuity lieth in caſe, where a man granteth unto another a yearly Rent for life, or for years, or in Fee out of his Lands, or out of his Coffers, or to receive from his perſon yearly at a certain day. Now the Grantee may ſue a Writ of Annuity for the ſame, *&c.* If he be behinde at the day of payment, *&c.* And if it be granted out of Land with a clauſe of Diſtreſs, then he may chuſe either to diſtrain for the ſame, and make it a Rent-charge, or he may bring a Writ of Annuity for the ſame. But if he bring a Writ of Annuity for it; if the Defendant appear, and the Plaintiff declare thereupon, then he cannot diſtrain for it after. And in like manner if he do diſtrain for it, and avow, then he ſhall not ſue a Writ of Annuity for the ſame Rent; but if a man grant a yearly Rent for life, for years or in Fee, and doth not expreſs in the grant that it ſhall be taken out of any Lands or Tenements, nor any Diſtreſs granted for non-payment thereof, then it is meerly taken for an Annuity; and he ſhall not A have

have any other remedy for the ſame, but a Writ of Annuity.

B And this Writ may be ſued before the Sheriff in the County by Juſtices, as well as in the Common Pleas, and the form of the Writ in the County is ſuch.

The King to the Sheriff, &c. We command thee that thou Juſtice A. *that juſtly, &c. he render unto* B. *one hundred marks, ten quarters of Wheat and twenty Robes, which are arrear to him of an annual Rent of* C. S. *two quarters of Wheat, and one robe, which he oweth him as he ſaith, as reaſonably ſhow he can, that he ought to render him, that no more, &c.*

The Plaintiff in Annuity had Judgment to recover damages, and thereupon brought a *Scire facias* to *B. R.* to execute the Judgment, and good 14 E. 3. *Fitz. Meſn* 17.

And the form of the Writ in the Common Pleas, is. *The King to the Sheriff, &c. Command* A. *that juſtly, &c. he render to* B. *one hundred marks, and the moyety of three Clothes with the Pilch, and of two Clothes with the Linnen, which are arrear to him of the annual rent of ten marks, and the moyety of one Cloth with the Fur, and of one Cloth with the Linnen, which him he oweth, &c. and unleſs, &c.*

34 H. 6. 20. 3 H. 6. Annuity 2. 16 E. 3. Annuity 22. If a man bring Annuity and the ſame extinguiſh or determine pendant the Writ, the Plaintiff cannot have Judgment in that Writ, but is put to his Action of Debt.

C And note, that in that Writ the form it, *Quem ei debet*, where he demandeth other thing then money: And yet in a Writ of Debt, the form is, that he ſay in the Writ, *Quas ei debet*, if not that he demand money, for if he demand robes or corn, or ſuch like Chattels; the writ ſhall be. *Quæ vel quas ei detinet*, and not *debet, &c.* And in Debt if a man demand money, and alſo ten Quarters of Wheat, then the form of the Writ, is. *Command* A. *that juſtly, &c. he render to* B. *ten pounds, &c. which to him he oweth, and ten Quarters of Wheat, which from him unjuſtly he detaineth, &c.*

D And if a man have an Annuity of twenty pound to receive of *A.* and he grant ten pound of the ſame to another man to receive of *A. A.* ſhall not be charged by that grant, but the Grantor onely by Writ of Annuity; but if he had granted ten pound parcel of the ſaid Annuity, it ſeemeth then that the Grantee ought to charge him who ought to pay the twenty pound by a Writ of Annuity. 9 H. 6. 12. 13.

And the Writ of Annuity ought to be brought in the County where the Grant was made; but an annuity to receive from a man of Religion, or a Body Corporate, or from a Church, ought to be brought where the Church or Houſe is, or where the Seiſin is alledged. E

49 E. 3. 5. ac' 10 E. 4. 10. And the heir ſhall be charged by a Writ of Annuity upon the grant of the Father, if he have Aſſets by diſcent. But an annuity ſhall not be maintainable againſt the heir by preſcription, becauſe it cannot be known whether he hath by diſcent from the ſame Anceſtor, *&c.* by whom the annuity was firſt granted. F

V. 14 H. 4. 28. And the Writ of Annuity ſhall be maintainable againſt a Parſon upon a grant made his Predeceſſor, with the aſſent of the Patron and Ordinary; and ſo upon an Ordinance made by the Ordinary without the Patron, if he have *Quid pro quo.* G

And Annuity granted by the Biſhop with the confirmation of the Dean and Chapter, ſhall binde the Succeſſor of the Biſhop.

And if a man grant unto another forty ſhillings, or a robe yearly at ſuch a day, *&c.* after day he may demand the one, or the other at his Election. H

16 E. 3. Annuity 34. 20 E. 3. Annuity 32. And an annuity ſhall be maintainable by a Parſon againſt a Vicar, upon an Ordinance of the Ordinary, if he have *Quid pro quo*

Upon debate of an Advowſon between a Prebend and a Prior, the Ordinary made a Compoſition and Ordinance, that the Prebend ſhould have an Annuity of twenty ſhillings, and the Prior the Advowſon for ever, and that did charge the Prior in a Writ of Annuity, and his Succeſſors. *T. 9 R. 2.* I

8 Ma. Dyer 92. And in time of vacation, the Patron and Ordinary may by their grant charge the Church for ever, as appeareth in the ſame year.

9 H. 6. 33. If a man grant 10 s. Parcel of Annuity of twenty ſhillings, And if the King grant one an Annuity for life or years, he ought to expreſs in the grant, by whoſe hands he ſhall receive the Annuity, as to ſay, *By the hands of our Sheriff of S. or of our Bailiff of our Manor of S.* And then the Bailiff or Sheriff ſhall have allowance upon his Patent ſhewed, if

and in truth that is no ſuch Annuity, the grant is void. But if it be granted to receive out of ſuch a ſum, and there is no ſuch ſum, yet the ſame is good to charge the perſon of the Grantor. V. Annuity 5. to receive in 10 *l.* & *de* 10 *l.* no difference.

he

he hath paid the ſame, and if he have not ſuch words in the grant of Annuity, the grant is void, for he cannot ſue to the King for it; and no perſon is bounden to pay the ſame unto him, if he be not expreſſed and named in the [153]
A Patent, *&c.* And the Proces in a Writ of Annuity, is Summons, Attachment, and for Diſtreſs. And for default of Diſtreſs, *&c.* Proces of Outlawry, by the new Statute made. 23 *H* 8. 14.

Writ de procedendo ad Judicium.

B THe Writ to proceed unto Judgment lieth where Judges of any Court delay the party, Plaintiff or Defendant, that they will not give judgment for him when they ought ſo to do, *&c.* then the party grieved, ſhall have this Writ directed unto the Judges, and the form of the Writ is ſuch.

The King to the Major and Sheriff of London. *Greeting. Becauſe the giving of Judgment of the Plea which is before you in our Huſting of* London, *without our Writ, betwixt* A. *and* B. *of a certain Treſpaſs to the ſame* A. *by the foreſaid* B. *done as is ſaid; long delay hath taken to the grievous damage of him* A. *as from his plaint we have received. We command you that the Judgment to give which thou haſt, which according to Law and Cuſtom of our City foreſaid, may be made the proceed, Witneſs, &c.*

C And upon that Writ he ſhall have an *Alias* and a *Pluries* directed unto them, if they will not proceed, and afterwards an Attachment upon that directed to the Coroners,
D *&c.* returnable into the Kings Bench or Common Pleas; and it appeareth by the Writ, that it lieth as well againſt Judges of Record, as other Juſtices.

E If a man pray in aid of the King in a real action, and the aid be granted, it ſhall be awarded, that he ſue unto the King in the Chancery, and the Juſtices of the Common Pleas ſhall ſtay until the Writ of *Procedendo in loquela* come unto them. a Ma. Dyer 101. the contr. opin.

And then they may proceed in the Plea, until it be come that they ought to give Judgment for the Plaintiff, and then the Juſtices ought not to proceed unto Judgment, until the Writ cometh to them to proceed to Judgment, which is called a Writ *de Procedendo ad Judicium.*

27 H. 8. 9. Eliz. Dyer 257, 258. V. 28 H. 6. 4.

And ſo it is if the Defendant in a Perſonal action, pray in aid of the King, and the aid be granted; now the Judges ought not to proceed until *Procedendo in loquela* comes unto them, and then they may proceed and try the iſſues joyned: But yet they ſhall not give Judgment until a Writ cometh to them to proceed to Judgment.

F And if the King by his Writ certifie to the Juſtices that the Lands are ſeiſed into his hands, *&c.* then they ſhall ſtay until the Writ *de Procedendo in loquela* be afterwards ſent unto them.

And ſo if it appear to Iudges of Record, that the Lands are ſeiſed into the Kings hands, or if it appear to the Court by pleading or ſhewing of the party, that the King hath intereſt in the Land, or ſhall loſe Rent or Service, there the Court ought to ſtay until they have from the King a *Procedendo in loquela*, and if the *Procedendo* be directed unto any of the Judges to proceed, it is good, although it be not directed unto them all.

And if a man have aid of the King, the *Procedendo* ought to make mention of the aid prayer, and recite the ſame in the Writ, commanding them for to proceed in the plea, otherwiſe it is not good.

G And if Conuſans of plea be granted, *&c.* in an Action real ſued in the Common Pleas, and afterwards in the Franchiſe, the Tenant pray in aid of the King upon a good cauſe, and hath the aid granted; the *Procedendo* ſhall be parted to them in the Franchiſe.

H And if the King write unto the Juſtices to prorogue the Aſſiſe, becauſe the Defendant is in his ſervice, yet the Juſtices ought to proceed, and not to ſtay for the ſame.

I And if verdict paſs for the Plaintiff Aſſiſe of *Novel diſs.* before the Juſtices of Aſſiſe, and before they give Judgment by a new Commiſſion new Juſtices are made, then the Plaintiff in the Aſſiſe may ſue a *Certiorari* directed unto the other Juſtices, to remove the Record before the new Juſtices, that they may proceed unto Judgment, and the form of the Writ is ſuch.

The King to his beloved, and truſty E. *Greeting.* H. *hath ſhown unto us, that whereas he lately arraigned a certain aſſ. of Novel diſſ. before our beloved and truſty* H. *of* T. *and* E. *lately*

our

our Juſtices the Aſſ. &c. aſsign. by our Writ againſt R. *&c. and others, &c. contained of Tenements in* I. *And although you and the foreſaid* B. *that Aſſ. according to Law and Cuſtom took, yet judge upon the Verdict of the Aſſ. foreſaid, by pretence of a certain Commiſsion to our beloved and truſty* I. *of* C. *and* I. I. *all Aſſ. Juries and Certif. before whatſoever our Juſtices in the County foreſaid, by our Writ to be arraign. to take, after made, yet remaineth to be given, to the no ſmall damage and grievance of him* H. *wherefore expedient it is and neceſſary, that the foreſaid* I. *of* C. *and* I. *upon the record and proces of the Aſſ. foreſaid before you, and the foreſaid* B. *had, be certified. we command you that the rec' and proces, &c. concerning, to the foreſaid* I. *of* C. *and* I. *under your Seal, diſtinctly and openly without delay you ſend, and this Writ, For we command* I. *of* C. *and* I. *that having received and viewed the rec' and proces foreſaid to the Judgment to ref. according to Law and Cuſtom of our Realm they proceed. Witneſs, &c.*

And the party Plaintiff may ſue another Writ unto the new Juſtices, that when the Record is ſent unto them by the old Juſtices, that they receive and look upon the Record, and then to proceed to Judgment, and the form of the Writ is ſuch.

The King to his beloved and truſty R. *of* C. *and* I. *of* I. *Juſtic. the Aſſ. &c. Aſsign. Greeting, &c.* H. *hath ſhown us, &c. as above to there before our beloved and truſty* I. B. *and you* I. *of* C. *lately our Juſtice, &c. of the Tenements in* L. *and after at the proſecution of him* H. *to us ſuggeſting the foreſaid* B. *and you the foreſaid* R. *of* C. *that aſſ. to have taken, and the Judgment, &c. to have delayed. We have commanded the foreſaid* B. *that Record and Proces foreſaid of the aſſ. foreſaid, before him and you the foreſaid* R. *of* C. *had together with the Writ Original, &c. to you the foreſaid* R. *of* C. *and* I. I. *to our beloved and faithful* C. *of* L. *after &c. Juſtices, &c. aſsign. diſtinctly and openly ye ſhould ſend, and our Writ which to him thereupon came, you the foreſaid* R. *of* C. *and* I. I. *and the foreſaid* C. *of* L. *by another our Writ we have commanded that having received and viewed the Record and Proces foreſaid to the Judgment foreſaid according to Law and Cuſtom of our Realm to give ye would proceed; and although the ſame* B. *the rec' and proces of the aſſ. foreſaid before you the foreſaid* R. *of* C. I. *of* I. *and the foreſaid*

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foresaid C. *of* L. *hath sent, the Judgment yet of the Ass. foresaid remaineth to be given, to the no small damage and grievance of him* H. *We for that cause the business foresaid, as far as according to Law and Custom of our Realm may be, to hasten willing, and to the same* H. *further thereupon complishment of Justice to be made. Command you, that you or two of you, having viewed and examined the Record and Proces foresaid, the Judgment foresaid according to Law and Custom of our Realm, to give proceed. Witness, &c.*

And upon that Writ, if the Justices do delay to give Judgment, he may have an *Alias*, and afterwards a *Pluries* directed unto the same Justices, *Vel causam nobis significetis*; and if the Justices upon the Writ will not give Judgment according to the Writ, *Quære* whether the Plaintiff may have an Attachment against them, because they are Justices of Records. A

But see the Register amongst the Writs to remove Records, many Writs to proceed to Judgment, *&c.* of several forms. B

And if the Chaplain of a Chantry bring an Assise of *Novel diss.* against another Chaplain for Lands, and the Defendant claimeth the same Chantry by the Kings Collation, and prayeth in aid of the King. Now if the Defendant cannot shew Title in the Chancery for the King, he may have a *Procedendo*, directed unto the Justices of Assise, that they proceed unto the taking of the Assise, notwithstanding the allegation made of the Kings Collation; and he may sue the like Writ where the Defendant doth pray in aid of the King in Assise by the Kings grant, and have that granted, if he cannot shew matter in the Chancery, which proves the Kings Title; the Plaintiff shall have a *Procedendo*, That they proceed to take the Assise, notwithstanding the Allegation made of the Kings Grant. C

And there are divers Writs in the Register directed unto Justices of Assise, that they do not proceed in the Assise against the Defendant *Dummodo sit in servitio Domini Regis* in the War, but to continue them; but these Writs are made by vertue of an Act of Parliament, made for that time as it seemeth. But if the King certifie by his Writ unto the Justices, That the Lands are in his custody, by reason of non-age of any heir, by an Inquisition taken and returned D

in

in the Chancery; commanding that they do not proceed, the King not conſulted with; then it ſeemeth the Juſtices ought to ſtay for the time, although there is not any Office found nor returned; for they are bound to give credit to the Kings certificate, although that it be not true, *&c.* And in attaint for the Plaintiff if he be in War in the Kings ſervice, he may have a Writ directed to the Judges of the Common Pleas, to continue the Attaint, and to adjourn it to a certain day, *&c.*

E And in Aſſiſe of *Novel diſſ.* if the King ſend his Writ to the Juſtices, reciting that the Defendant holdeth the Land of the King by gift by his Charter for life, commanding them that they do not proceed the King not conſult. Now although the Tenant will not plead the ſame, it ſeemeth that by that Writ the Juſtices ought for to ſtay their proceedings. So if the King recite in the Writ, is in his ſervice in war beyond the Seas, or in *Scotland* and that he holdeth for life by the Kings Charter of the Kings gift, commanding them not to proceed the King not conſult, but to continue the aſſiſe until a certain day, there it ſeemeth they ſhall ſtay their proceedings; for the Tenant cannot plead it, *&c.* For if the Eſcheator will ſay, That he hath ſeiſed the Lands into the Kings hands in an Aſſiſe brought by any perſon in that caſe, the Court ſhall ſurceaſe, *à fortiori*, by the Kings Certificate; and divers ſuch Writs are in the Regiſter, *&c.*

F In Aſſiſe of Lands and Tenements, the Defendant pleads two or three Records in Bar, to divers parcels of the Land which are in the Treaſury, and the Plaintiff denieth thoſe Records, The Defendant ought for to remove thoſe Records out of the Treaſury by a *Certiorari* directed unto the Treaſurer and Chamberlains of the Exchequer. And if he ſue ſuch *Certiorari* to the Treaſurer, and Chamberlains, and they certifie ſome of the Records in the Chancery to the King, and moreover certifie, That there are other Rolls of the ſame Juſtices, of which they have not yet made full ſearch. Upon that Certificate made by the Treaſurer and Chamberlains in the Chancery, the King ſhall ſend his Writ unto the Juſtices, commanding them to continue that Aſſiſe until the next Aſſiſes, that full ſearch may be made of thoſe Records, ſo that

that the Tenant loſe not his Lands for failer of the Records; and ſuch Writ is in the Regiſter.

And if a man ſue an Aſſiſe before the Juſtices of Aſſiſe, G and the Tenant plead Baſtardy in the Plaintiff, upon which a Writ is awarded to the Biſhop to certifie at the next Aſſiſes; and before the next Aſſiſes the King maketh new Juſtices, and the ancient Juſtices do certifie the Record of Aſſiſe unto the Treaſury. The Plaintiff ought for to ſue a *Certiorari* to remove the Record out of the Treaſury into the Chancery by a Writ to the Treaſurer and Chamberlains, and upon that Record ſent unto the Chancery, he ſhall have a Writ of *Mittimus* ſent unto the Juſtices reciting the matter, and in the end of the Writ ſhall be this clauſe.

[155] *We that to the parties foreſaid in the ſame Aſſ. what is juſt may be done, the Record and Proces of the foreſaid plea which before you in our Chancery, for certain cauſes to come we have cauſe, to you have ſent under the foot of our Seal command, that theſe being looked into, as alſo the Certificate of the foreſaid Biſhop before you upon this, as he ſaith ſent, and having received from the Sheriff the Writ Original of the ſame, which with him remaineth, as by inſpection of the ſame Record and Proces, is manifeſt to us again in the ſame Aſſ. according to the tenor and plea foreſaid proceed ye, and to the ſame parties cauſe to be done, what of right and according to Law and Cuſtom of our Realm, ſhall be to be done: For we command the ſame Sheriff, that the ſaid Writ to you he deliver, at the next Seſſion in the County aforeſaid. Witneſs, &c.*

And if a man ſue an Aſſiſe before Juſtices againſt one A Tenant, and in the ſame Aſſiſe he name the Major and Commonalty of any Town as Diſſeiſors or Bailiffs of any Liberty as Diſſeiſor, unto the end they may not have Conuſans of the plea; or that they ſhall not make the pannel. Now he may ſue a ſpecial Writ in the nature of an *Audita Querela* directed unto the Juſtices of Aſſiſe to inquire of the matter, and to do right unto the parties; and if it be found, it ſhall abate the Aſſiſe, *Ve.* 9 *H.*4.5. And ſee the like Statute made for the Sheriff. 11 *H.*6. 2. But the Sheriff or Bailiff ought to ſhew the matter unto the Court, and pray that it be enquired of, *&c.*

Writ

Writ de Quod ei deforceat.

B THe Writ of *Quod ei deforceat* lieth; where Tenant in Tail, or Tenant in Dower, or by the Curteſie, or for term of life, loſe their Lands by default in a *Præcipe quod reddat* brought againſt them, Then they have not any other remedy if they were ſummoned according to the Law, *&c.* But this Writ of *Quod ei deforceat*; and this Writ is given by the Statute of *Weſtm.* 2. *cap.* 4. and the Writ is mentioned in the Statute, and the form is ſuch.

C *The King to the Sheriff, &c: Command* A. *that, &c. he render* B. *which was the wife of* C. *one Meſſuage with the appurtenances in* N. *which ſhe claimeth to be her reaſonable Dower.* Or thus, *Which ſhe claimeth to be of her reaſonable Dower, and which the ſame* A. *injuſtly deforceth her of, as ſhe ſaith.*

D And if the Tenant in Frankmarriage bring the Writ, then the Writ is, *That juſtly, &c. he render to* B. *one Meſſuage, with the appurtenances which he claimeth to be his right and marriage, and which the ſame* A. *injuſtly deforceth him of.*

And if he be Tenant in Tail, then the Writ is, *That he render, &c. which he claimeth to hold to him and the heirs of his body iſſue, and the foreſaid* A. *injuſtly deforceth him.*

And for Tenant for life the writ is, *Which he claimeth to hold for term of his life, or for Tenant by Curteſie which he claimeth to hold by the Law of* England.

And the Regiſter is, That this Writ for Tenant by the curteſie, is by Equity of the Statute. But if the Tenant in Tail, or ſuch other Tenant who hath a particular eſtate, loſe by default where he is not ſummoned, *&c.* Then he may have a Writ of Diſceit, or a *Quod ei deforceat*, as he pleaſeth.

E If a man loſe by default in an action of Waſte ſued forth againſt him, he ſhall not have *Quod ei deforceat*, for the verdict which found the waſte. 2 H. 4. 2. *Hankford.*

And if a man loſe any Land by default in a Writ of Right in a Court Baron, he may remove that Record into the Common Pleas, and have a *Quod ei deforceat* upon that contr. 41 E. 3. 8. 44 E. 3. 42.

that Record, and ſo he ſhall have the *Quod ei deforceat*, although he do not remove the Record; but then it ſeemeth,
2 E. 4. 11. That the *Quod ei deforceat* ſhall be ſued in the Common
10 E 4. 2. Pleas, or in the Court Baron, where he loſeth the Land
10 H. 7. ac as he pleaſeth. *Tamen quære.*

And the *Quod ei deforceat* lieth againſt a ſtranger to the F
Recovery; as if a man recover by default, and maketh a Feoffment, the *Quod ei deforceat* ſhall be brought againſt the Feoffee.

And if a woman loſe by default, and taketh husband, ſhe and her husband ſhall have the *Quod ei deforceat*; but if Tenant in Tail loſeth by default and dieth, his heir ſhall not have the *Quod ei deforceat*, but a *Formedon*; for that is his Writ of Right.

Where a woman hath Dower aſſigned her in the Chan- G
cery for the nonage of the heir who is in Ward to the King; and afterwards the heir at full age ſueth a *Scire facias* in the Chancery againſt the wife, to avoid that endowment, and recovereth in that *Scire facias* by default of the wife. Now the wife ſhall have a *Quod ei deforceat* in the Common Pleas upon that Recovery.

And ſo if a man recover in the Kings Bench any Land by default, upon a *Scire facias* ſued out of any Record which is there, the Tenant who loſt by default, ſhall have his *Quod ei deforceat*, and ſhall ſue the ſame in the Common Pleas.

45 E. 3. 21. If two Coparceners Tenants in Tail loſe their Lands by H
default, they ſhall joyn in a *Quod ei deforceat*, and yet the default of the one is not the default of the other. *M.* 46 *E.* 3.

And in a *Præcipe quod reddat*, if the Tenant for life or in I
tail appear, and after depart in deſpite of Court, he ſhall loſe his Land, and yet he ſhall have a *Quod ei deforceat*, for that Recovery is by his default, becauſe he did not appear when he was demanded.

And if Tenant in Tail, or Tenant for life after the miſe joyned in a Writ of Right depart in deſpite of Court, he loſeth his Land, and there he ſhall not have a *Quod ei deforceat*, becauſe Judgment final ſhall be given againſt him in that caſe.

[156] If the husband and wife be ſeiſed of Land in the right of A
the

the wife, for the life of the wife, and they loſe the Land in a *Præcipe quod reddat* by default, yet they ſhall have a *Quod ei deforceat, &c.* Old.N.B. 155. contr.

And if Tenant for life loſeth his Land in a *Ceſſavit* brought againſt him by default. Yet he ſhall have a *Quod ei deforceat* by the Statute of *Weſt.2. H.5 E.3. & M. 6 E.3.* 10 E.4.2. contr.

B And if Tenant by Reſceit upon the default of Tenant for life appeareth, and is received and pleadeth, and afterwards loſeth by Action tryed; yet the Tenant for life ſhall have a *Quod ei deforceat*, for the judgment is given againſt him by his default.

And if the Tenant vouch, and the Vouchee will not appear for which the Tenant loſeth by default of the Vouchee. It is to ſee whether the Tenant ſhall have a *Quod ei deforceat*, for he loſeth the Land by the default, although it be not his own default; for the Statute is, *And whereas beforetime when any man had loſt his Land by default, he had no other way to recover it, but by a Writ of Right*, and there it doth not ſay *per defaltam ſuam*, but onely by default. But after in the Statute, it ſaith, *It is provided, that hereafter their default ſhall not be to them ſo prejudicial, &c.* And by that it ſeemeth that the Tenant ought to make default: But it ſeemeth that the default of the Vouchee, is the default of the Tenant, and ſo default in both, *Quære* of that. But if the Tenant vouch, and the Vouchee appeareth and entreth into the Warranty, and afterwards loſeth by default; now if the Tenant loſe by the default of the Vouchee, he ſhall not have a *Quod ei deforceat*, becauſe he ſhall have judgment to recover over in value againſt the Vouchee, by the default of the Vouchee, ſo as he ſhall have recompence; but if the Vouchee doth not appear, but maketh default, then he ſhall loſe the Land by the default of the Vouchee; but that is not the default of the Tenant; and therefore *Quære* of that caſe.

C And if husband and wife loſe by default, the Land of the wife which ſhe holdeth for term of life, if the husband dieth, ſhe ſhall not have a *Quod ei deforceat*, but a *Cui in vita*, for it is a demiſe made by the husband. And when he bringeth the *Quod ei deforceat*, he counteth that he was ſeiſed of the Land in his demean, as of Freehold, or in his Demeſn in Tail, without ſhewing of whoſe Leaſe or Gift he was ſeiſed, and he ought to alledge Explees in himſelf, ac' *&c.* S.48 E.3.8 2 E.4. 11.ac'

&c. And then the Defendant ought to deny the right of the Demandant, *&c.* and ſhews, how that at another time he recorded the Land againſt the Demandant, by *Formedon*, or other action, and ſhall ſay in the end of his plea, *That he is ready to maintain in right and title foreſaid, by the gift foreſaid, &c. whereupon he prayeth judgement, &c.* And then the demandant in the *Quod ei deforceat* ſhall traverſe that title, or may ſhew matter to bar that title, *&c.* but he ſhall not make defence, and then plead in Bar, as he ſhall do in the *Formedon*, *&c.*

The Tenant in the *Quod ei deforceat* may plead any Bar as in other action; and then the Demandant cannot vouch by the Statute of *Weſt.* 2. *cap.* 4. But if he make his Bar by the firſt recovery, then he may, 33 *H.* 6. 46. *Quod nota.*

Writ de Attornato faciendo vel recipiendo.

THe Writ *de Attornato faciendo* or *recipiendo* lieth, where a man ought to do ſuit at the County, or at the Hundred, or Wapentake, or other Court, and he would make Attorney for him to appear at the ſame Court, *&c.* And if he be in doubt whether the Sheriff will admit ſuch a man for his Attorney, which he maketh; then he who would make ſuch Attorney, may ſue that Writ directed unto the Sheriff or Bailiff of the Hundred, commanding them to receive ſuch a man to be Attorney, for him to appear, *&c.* and the Writ is ſuch: E

The King to the Sheriff, &c. Becauſe by our Common Councel of our Realm, it is provided, That every free-man who ſuit oweth to the County, Tything, Hundred and Wapentake, freely may make his Attorney his ſuit for him to make. We command thee that the Attorney, who S. in his place attorn will his ſuits for him to do, at thy County foreſaid; thy tything of A. and B. Hundred of C. and D. thy Wapentake of E. and F. in the place of him S. without difficulty to this thou receive: Witneſs, &c.

Otherwiſe unto a Bailiff of a Hundred, thus. *The King to his Sheriff of the Hundred of* Cobham *and* Bray, *Greeting. Becauſe by the Common Councel of our Realm, &c. who ſuit oweth to the Hundred, freely pay, &c. We command you that the Attorney, &c. to the foreſaid Hundred of* Cobham *and* Bray, *in the place of him S. &c.*

Otherwiſe unto the Bailiffs of another Lord. *The King to the Bailiff of A. of L. Greeting. Becauſe by the Common*

Councel

Councel, &c. who ſuit oweth to Court of his ſaid Lord freely may, &c. you we command, &c. at the ſaid Court of the Lord of I. in the place of him S. without difficulty to this yere-ceive, witneſs &c.

And by that it appeareth, That the Tenant may make Attorney by his Letters Patents to do ſuit at the Court of his Lord. And if the Tenant by his Letters Patents under his ſeal make attorney for him, to do ſuit for him at the Lords Court, or at the Hundred, and the Bayliff will not admit of him, &c. then he ſhall have a writ unto them in this form;

The King to the Bailies of the Dean and Chapt. of the Church of the bleſſed Mary of Lincoln *of C. or hundred of S. greeting, becauſe, &c. to there we command that the Attorney whom S. by his Letters Patents in his place attorn will his ſuit for him to do, at the Court of the ſaid Dean, and Chapter of C. or to the Hundred of the foreſaid Dean, and chapter of C. in the place of him S. without difficulty to this receive, this once of our grace ſpecial &c.*

And for the Guardian there is another Writ thus; *The King, &c. We command you that the Attorney which is Guardian of the Land and heir of R. in his place attorn will, his ſuit for him in the name of the ſaid heir to do, &c. in the place of him the Guardian without difficulty to this &c.* Or thus to the Bailies of the King. *The King to his Bailies of the honour of* Peuerel *in the County of N. greeting, becauſe &c. we command you that the Attorney whom S. in his place attorn will his* [157] *ſuit for him to do to our Court of the honour foreſaid in our County foreſaid in the place of him S. receive &c.*

A And if the Lands of any Tenant be in Ward to the K. for the non-age of his heir, becauſe he holdeth other lands of him in *capite*, &c. and his other Lords will diſtrein for ſuit during the time the Lands are in the Kings hands, or in the hands of his Committee, Then the King or his Committee ſhall have a ſpeciall Writ unto the Bayliffs of the other Lords, that they do not diſtrein the Committee, nor in the Lands, &c. during the time he is in the Kings hands, or in the hands of his Committee, and if they have diſtreined them, that they deliver back the diſtreſſe againe; and that Writ appeareth in the Regiſter.

And if the King hath any Lands or Tenements in ward during the nonage of an Enfant, and the King in Chancery aſſignes Dower unto the wife of the Husband who was Father to the Ward of Lands holden of other Lordſhips; Now if the other Lords will diſtrein the Tenant in Dower for ſuit at their Courts during the time the lands are in the kings hands, The wife ſhall have a writ unto the Bayliffs of the other Lords, commanding them that they do not diſtrein her. And recite in the Writ all the ſpecial matter; and if they have taken any diſtreſs, that they deliver it back again.

If a man make an Atturney to do ſuit for him at the County, or Hundred, or other Court, and the Bayliffes will not admit him for his Atturney. Or if the Bayliffs do admit him for Atturney, and afterwards diſcharge him after the year; ſuppoſing that he ought not to continue attorney for the party above one year; Or for any other unreaſonable cauſe they diſcharge him to be Attorney for the party; Then the party may have a ſpecial Writ directed unto the Bayliffs, &c. commanding them that they receive him for his Atturney: and thereupon he may have an *Alias*, and a *Pluries*, and an *Attachment* againſt them returneable in the Common Pleas, or in the Kings Bench, if they will not admit him for his Attorney, or return cauſe upon the *Pluries* which ſhall be allowable wherefore they do not admit him; and the form of the writ is ſuch. B

The King to the Baylies of A. *of the hundred of* B. *greeting, of the part of* C. *if ſhown to us, that whereas he by our Writ his Atturney his ſuit for him to make, to the Hundred foreſaid of the Lord of* B. *in the ſame hundred before you had made, and the ſame Atturney by the ſame Writ to thus admitted, that ſuit hitherto hath done, as the manner is in our Realm; you to the preſumption voluntarily yielding and cauſe pretending that the power of ſuch Attorney beyond the year ought not to laſt, him* C. *the foreſaid ſuit by his Atturney foreſaid to do permit not, to the no ſmall damage and grievance of him* A. *of which we wonder much, and are moved; and becauſe the vertue of our Writs ſuch Atturney to make, a term takes not, nor is a term limitted during the perſons who to this are required, we that the ſame* C. *or others be not induly vexed, or grieved by the occaſion foreſaid, remedy hereupon to apply wi-*

King,

willing, command you firmly injoyning, that from ſuch voluntary and undue vexations, and grievances to the ſame C. *or others on that occaſion hereafter to be done deſiſting him* C. *the ſuit foreſaid by his Attorney foreſaid without any difficulty to do you permit, according to the tenour of our former Writ to you thereupon directed, and ſo behave your ſelves in this part that the foreſaid* C. *by occaſion foreſaid be not put in default, nor in any thing be at loſſe, and that it may not need us hereupon more to be ſolicited, by which otherwiſe to put our hand to this we ought. Witneſs, &c.*

C Note; That the party may make attorney by the Kings Writ directed unto the Bayliffs, commanding them for to receive ſuch perſon for his Attorney. Or he may have a a Writ out of the Chancery directed unto the Bayliffs, or Sheriff to receive any ſuch perſon for Attorney, that he will preſent unto the ſaid Bayliffs or Sheriffs to be his Attorney to do his ſuit; Or he may make Attorney by Letters Patents directed unto the Bayliffs without ſuing any ſuch writ.

And if a man ſue forth a Writ directed unto the Bayliffs to admit one for attorney to do his ſuit for him, and the Bayliffs refuſe for to admit him; Now the party who ſued forth the Writ ſhall have an attachment againſt the Bayliffs for that refuſal, without ſuing forth an *Alias*, or a *Pluries* directed unto them.

And ſo the ſame Law is, If the Tenant by his Letters Patents maketh one his Attorney to do his ſuit for him, and the Sheriff or Bayliff of the Court doth refuſe to admit him for his Attorney: Upon that refuſal, the party ſhall have an Attachment againſt the Bayliffs, &c. although he hath not ſued forth any Writ, directed to him before, becauſe they do againſt the Statute, which requireth, That they admit him for Attorney who the Tenant will make to be his Attorney.

D And he ſhall have the like Writ againſt the Bayliffs of any other Lord, who refuſe to admit an Attorney to do ſuit for the Tenant in any Court Baron, and that Writ appeareth in the Regiſter.

Writ pro Exoneratione ſectæ ad Curiam Com. vel Baron.

[158] THis writ lyeth where the Tenant holdeth his land to A
do ſuit at the County Court, Hundred, or other Court Baron, or Wapentake or Leet, and he who ought to do the ſuit is in ward unto the king, or of his Committee, and the Lord of whom he holdeth by ſuch ſervice, will diſtrein him to do his ſuit at his Court, during the time he is in ward unto the King or his Committee; his Guardian ſhall ſue this writ unto the Sheriff, or Bayliffs of the Court, that they do not diſtrein him &c. to do the ſuit during the time he is in ward to the King or his Committee; and the form of the Writ is ſuch.

The King to the Bailies of A. *of* I. *greeting, whereas according to law, &c. we ought not ſuit to the Court of any to make by occaſion of lands and tenement whatſoever in our hand, or in our cuſtody being, and thoſe to whom ſuch like Cuſtodies we ſhall commit thoſe cuſtodies during that Cuſtody ſo freely, and from all ſuit quietly to hold ought, as if we thoſe in our hand held. We command you that by reaſon of the land and tenements of* I. *deceaſed, who of us hold in capite, and which are in the cuſtody of the ſame* R. *of our grant, ye diſtrain not, or to be diſtrained cauſe, ſuit to do to the Court foreſaid of the Lord of* I. *during the cuſtody beforeſaid, and diſtr, if any &c.*

And the like Writ ſhall be for Menant in Dower, where B
ſhe is endowed in the Chauncery of Lands which are in Ward to the King, which lands are holden of other Lords, now if the other Lords will diſtrain the Tenant in Dower, to do ſuit for thoſe lands which ſhe holdeth in dower, ſhe ſhall have a Writ for to diſcharge her, which is ſuch.

The King to the Bail. of A. *of* B. *greeting whereas according to law, &c. unto being ---- and women Lands and Tenements holding in Dower of ſuch Cuſtodies, thoſe as freely and from all ſuit quite to hold ought during thoſe cuſtodies as if the foreſaid Lands and Tenements in our hands we ſhould hold, we command you that* M. *and* R: *his wife by occaſion of the lands, and Tenements of* K. *which were in* F. *who of*

us

us held in Capite, and which the A. M. and R. hold of the Dower of her R. of the gift of the aforesaid H. sometime her husband, and of the inheritance of his son and heir A. within age. and in our custody being, ye distrain not to do suit to the Court of the Lord, during our Custody foresaid, and the distr. &c.

And if the heir be in ward of the King and his lands also, and afterwards the tenents paravail who hold of the heir are distrained by other Lords, of whom the heir hold of his lands to do suit unto the Lords Court, those Tenants shall have a Writ directed unto the Lords Bailiff, to discharge them of the suit, and the writ is such.

The King to the Sheriff of Nott. greeting, whereas according to law, and custome of our Realm, no man who holdeth of the heir within age, and in our custody being, is bound to do suit to the County, Hundred, Wapentake, or other Courts, for the lands and Tenements of those heirs in our hand being during the custody aforesaid. We command thee that the Abbot of Derby holding certain lands and tenements of Roger the son and heir of Roger Bellers *deceased in* Chilwell, *who of the Lord* Richard *lately King of* England *held in Capite, by occasion of the lands and tenements of the same heir, in the same town in our hand, by reason of his minority being thou distrain not, nor to be distrained cause to do suit to the Wapentake of B. during the custody abovesaid.*

And if the heir and his lands be in the Kings ward, for lands holden of the King in Capite, and afterwards the other Lords of whom the heir holdeth parcel of his lands will distrain for any service or rent to them due, then the King or his Committee may sue a writ for them to surcease from such distress, and the writ is such.

The King to the Bail. &c. whereas heirs within age, and in our custody being, any services during those custodies to do ought not, or are held according to law, and custome of our Realm. We command you that distress which the Abbot of W. *to the Tenant of the heir of* William *of* W. *who of us held in capite within age, and in our custody being, for Homag. Feal. and other services of the aforesaid heir to the foresaid Lord to be done, maketh ye surcease altogether, during the custody foresaid. and the distr. if any, &c.*

And also the Tenant in Dower shall have such Writ if the Bayliff of other Lords will distrein her, for the

relief of the heir or other Services during the time that the heirs lands are the Kings cuſtody, or in the cuſtody of his Committee. And it ſeemeth that he may ſue this writ directed unto the Lord himſelf, as well as to the Bailiffs, or unto them both.

Note, that if a man holdeth of another to do ſuit to his Mill, &c. if he do not the ſuit he ſhall have a *Secta ad molendinum* againſt him, and by the ſame reaſon, if a man hold of another Lord to do ſuit at his Court of the Manor of D. if he do not the ſuit, the Lord may have a writ of *Secta ad Curiam ſuam faciend.* as well as the other Writ. But yet there is no ſuch writ in the Regiſter, becauſe he may diſtrein for that ſuit, and ſhall not have any other profit but onely appearance in his Court. But in the other caſe *de ſecta ad molendinum*, he ſhall have other profits by the ſuit; the toll of the Grain he ſhall grinde there, and for that profit it ſeemeth the action of *Secta ad molendinum* was given, and for the ſuit at the Court but onely a diſtreſs, *tamen Quære.*

Ve. 31. H. 8. 35. 33. H. 6. 7. Stamford. 38. H. If the King have lands by forfeiture or Eſchear, and A leaſeth them for life, at will, or in tail, and if the Lord of whom the lands are holden will diſtrein the Kings Committee or Leſſee for ſuit or other Services, he ſhall have a ſpeciall VVrit unto the Lords Bayliffes to ſurceaſe, &c.

And if lands diſcend unto diverſe Coparceners, for which one ſuit ſhall be done at the Lords Court, if parcel of thoſe lands come into the Kings hands, then he ſhall have ſpecial Writ to diſcharge him of the ſuit for the time they ſhall be in the Kings hands, which ſhall be ſuch.

The King to the Sheriff of N. *greeting, whereas of the Common Councel of our Realm it is provided, that if any inheritance of which one ſute is due, to more heirs, &c. or to others by ſale, &c. be devolved, yet but one &c. to be made was accuſtomed, and a certain inheritance of* H. *of* B. *which was of the Barony of* B. *of which Barony one ſuit onely at the County foreſaid is due to our beloved and truſty* W. *of* H. *and I. ſonne and heir of R. of S. within age, and in the Cuſtody of our beloved and truſty* R. *of N. by our Commiſſion being by ſale is devolved as we have received. And we according to law and cuſtome, &c. ought not to make any ſuit by*

by occaſion of Lands and Tenements in our hand, and in our cuſtody being, and thoſe to whom ſuch cuſtody we ſhall commit thoſe as freely, and from all ſuite quite to hold ought, as if we thoſe in our hand ſhould hold, we command thee that if ſo it be, then thou diſtrein not the aforeſaid W. of H. *to do ſuit to thy County foreſaid for the lands and Tenements of the Barony foreſaid during cuſtody of the ſaid heir aboveſaid, &c.*

And if the wife be Tenant in Dower of any land, ſhe ſhall not be diſtreined to do ſuit for that land which ſhe holdeth in Dower, if the heir have ſufficient land in the ſame County to be diſtreined for the ſame. And if ſhe be diſtreined, then ſhe ſhall have ſuch Writ.

B *The King to the Bayliff of the hundred of* N. *greeting, &c. whereas according to Law, and Cuſtome of our Realm, women Tenants in Dower for their Lands and Tenements which they hold in Dower ſuit to the Hundred or Court of any ought not to do, you we command that* A. *which was the wife of* B. *to do ſuit to the Hundred foreſaid, foreſaid for the land and tenements which ſhe holdeth in dower, of the franck-tenement of the foreſaid* B. *which was ſometime her husband, againſt Law and Cuſtome of our Realm thou diſtrein not, whiles that the heir of the foreſaid* B. *other lands and Tenements in the Bailywick hath, by which diſtreined he may be, that ſuit for the foreſaid Dower to do, and the diſtreſs if any thou haſt made, &c. that without delay to be delivered thou cauſe.*

C And if lands diſcend to many Coparceners whereof one ſuit ought to be done for the whole land; now if the land be holden of the King, then all the coparceners ought to do the ſuit, as well after partition as before: But if the land be holden of another Lord, then that Coparcener or his Feoffee who hath the part of the eldeſt ſiſter ſhall onely do the ſuit, and the Lord will diſtrein the other Coparceners, then they ſhall have writ againſt him directed to him or his Bailiffs to diſcharge them of that ſuit, and diſtreſs taken, &c. and the Writ ſhall be ſuch. Plowd: Com. 240. Ac.

The King to C. *or the Bayliff of* C. *greeting, &c. whereas of the Common, &c. provided it is, that if any inheritance of which one ſuit is onely due to more heires Coparceners of the ſame inheritance, or to others by ſale or other manner be devolved one onely ſuit is to be made for that inheritance, as before to be done hath been accuſtomed, and a certain inheritance of* A.

of N. which was for which one suit onely is due to thy Court of I. or to the Court of the foresaid Lord of I. to A. B and C. Coheirs and Coparceners of the inheritance aforesaid devolved is as we have received, thee or you we command that thou distrein not, or ye distrein not, the foresaid A. B. and C. diverse suits for their portions of the inheritance aforesaid severally to make to thy Court of I. or to the Court of the Lord of I. against the form of the provision foresaid, and the distress if any, &c.

And if the Tenant enfeoff diverse persons of Lands for which one ought to be done, if one of the Feoffees do the suit, &c. if the other Feoffees are distreined to do suit for that land, they shall have such Writ, which writ is in the Register, and that writ is given by the Statute of *Marlebridge* cap. 9.

And so if the heirs or Feoffees shall do the suit at the County, Hundred, or Wapentake, if one do the suit all of them are discharged, and if they be distrained they shall have that Writ.

And so if one Coparcener maketh a Feoffment of his part, or a man be Tenant by the courtesie of one part of the land, yet one suit shall be onely done by one Coparcener by him who hath the eldest part. And if they be joint Feoffees, then by one of them, as they can agree amongst themselves, &c. And if he sue such Writ, and he be distreined, then he shall have an Attachment against the Lord, or the Bailiffs to whom the first Writ was directed, to answer that contempt, in which Writ he shall recover his damages, &c.

But if there be two Coparceners of land, for which one suit ought to be done, and the eldest sister will not do the suit at the Lords Court, then the Lord may distrein the other Coparceners as well as the eldest Coparcener for that suit, and if the Coparceners be distreined, then they shall have a writ against the eldest sister to compel her to do the suit, and the writ shall be such.

The King to the Sheriff, &c. If B. and C. shall &c then summe, &c. A. that she be, &c. to show, why whereas of the Common, &c. that if any inheritance, &c. to there accustomed, and that she which hath the part by Eldership, &c. Certain inheritance, &c. to there---is devolved, as we have received; and the foresaid A. hath the eldest part of that inheritance

tance, and the foreſaid B. and C. ready are to contribute for their portions that ſuit to make, the ſame A. that ſuit for her ſelf, and the foreſaid B. and C. to the Court foreſaid, to make refuſeth to the grievous damage of them B. and C. and againſt the form of the proviſion foreſaid, as is ſaid, and have there the ſum, &c.

A And if a man have lands in divers places in the County, [160] and hath ſeveral Leets, &c. or Hundreds, and he is conſtrained to come unto the Leet, or the Sheriffes Torn, where he is not dwelling, or converſant, but is dwelling within the precinct of another Leet, or hundred, &c. Then he ſhall have a Writ unto the Sheriff, for diſcharging him from comming to the Sheriffs Torn, or Hundred, or Leet, or other place, then in the Leet or precinct of the Hundred where he dwelleth; and the writ is ſuch.

The King to the Sheriff of Worceſter, *greeting; whereas of the Common Council of our Realm, provided it is, that if any in divers Hundreds have tenements, they need not come to the torn of the Sheriff, but in the Bailiwick where they are converſant, we command thee that thou diſtrain not S. to come to thy torn in our hundred of I. againſt the form of the proviſion foreſaid, &c.*

And look the Statute of *Marlebridge*, Cap. 10. By which it appeareth, that the Sheriff ought for to hold his Torns as he hath uſed in the time of *Richard* the firſt, and *John* Kings of *England*.

And by the Writs it ſeemeth, that he ſhall hold his Torns in every Hundred, &c. And if the Sheriff diſtrain againſt the Statute any man, then he may ſue that Writ upon the Statute, &c. and if he do diſtrain him after, then he ſhall have Attachment againſt the Sheriff, &c. And the Writ is ſuch.

The King to his Coroners in the County of Lincoln greeting. If A. ſhall, &c. then put the, &c. B. *our Sheriff of the County aforeſaid, that he be, &c. to ſhew, why whereas of the Common-Councel, &c. to there converſant the ſame B. or the ſame Sheriff hath diſtrained the foreſaid A to come to the torn of him the Sheriff, &c. of our Hundred of L. againſt the form of the proviſion foreſaid, and againſt the form of our command to him thereupon directed, as is ſaid, and having, &c. and the beaſts of him A. by that occaſion taken, in the mean time to be delivered cauſe ye, witneſs, &c.*

And

And if a man have lands within the precinct of ſeverall Leets, or in one County, and he dwelleth within the precinct of one of them, and he is diſtreined to come unto another Leet where he dwelleth not, then he ſhall have ſuch Writ unto the Sheriff, or Bayliffes of the Court, &c. that they do not diſtrain him to come to that Leet, within the precinct whereof he dwelleth not, and the Writ is ſuch. B

The King to his Bayliff of the Honour of C. in the County of Lincoln, or to the Bayliff of A. of B. in the County, &c. greeting, whereas of the Common-Councel, &c. if any in divers Hundreds, &c. they need not come to the view of Frankpledge, *but in the Bailiwick where they ſhall be converſant; you we command that he diſtr. not to come to the view of* Frankpledge *in the Court, or in the Court of the Lord of the Honour foreſaid, in the County foreſaid, againſt the form, &c. and the diſtreſs, if any, &c.*

And it appeareth that if the party be diſtrained, after that he hath ſued the writ directed unto the Sheriff, or Bayliffs, that they do not diſtrain him: That he ſhall have an Attachment againſt them. But it ſeems reaſonable, that firſt he have an attachment againſt the Sheriff, or againſt the Bayliffs, who diſtreined him to come to the Leet in the Hundred where he is not dwelling, if he be dwelling within the precinct of another Leet, becauſe the Statute of *Marlbridge* is a prohibition in it ſelf, and he who doth contrary to the Statute, doth wrong unto the party, upon which he may have an attachment, without ſuing forth any Writ.

Note, that men or women who have entred into Religion, ought not to come unto the Sheriffs torn, or unto the Leet of any other without great cauſe; and if they be diſtrained for to come, they may have a writ out of the Chancery to diſcharge them, which ſhall be ſuch: C

The King to the Sheriff, &c. Whereas of the Common-Councel, &c. that men Religious need not come to the torn of the Sheriff, &c. or thus, to the view of Frankpledge, unleſs their preſence for any cauſe ſpeciall be required, we command then that thou diſtrain not the Abbot of L. to come to thy torn, Or thus, to the view of Frankpleade in our hundred, of F. againſt the form of the proviſion foreſaid, and the diſtreſs, &c.

And

And the Abbot ſhall have ſuch Writ unto the Bayliffs of another Lord, that they do not diſtrein him to come to his Leet.

And by the Common Law, Parſons of Churches ſhall not be compelled or diſtreined to come to the Kings Leets, or to the Leets of other Lords of the Lands annexed to their Churches, and if they be diſtreined ſo to do, they ſhall have ſuch Writ.

the King to the Sheriff, &c. Whereas according to Cuſtome of our Realm, perſons Eccleſiaſtical by reaſon of their Lands and Tenements to their Churches annexed to come ought not to the view of frankpledge in our Court, or of others whatſoever, we command thee that C. perſon of the Church of L. by reaſon of his Lands, and tenements to the Church foreſaid annexed, to come to the view of frankpledge in the hundred of N. thou diſtrain not againſt the Cuſtome aforeſaid, and the deſtr. &c.

And Clarks who are not Parſons, nor have Benefices, ſhall not be diſtreined or compelled to come to Torns or Leets, but they ſhall have a VVrit to diſcharge them, thus.

D *The King to the Sheriff, &c. Whereas the Parſons Eccleſiaſtical need not come to the Torn of the Sheriff, or to the view of Frankpledge, unleſs their preſence for ſome cauſe ſpecially be required, according to the form of the proviſion of the Common Councel of our Realm, in ſuch like caſe for men religious made, therefore we command thee that thou diſtrein not S. Parſon of the Church of* N. *or Chaplain, to come to thy torn or view of our frankpledge in the Hundred of* I. *againſt the form of the proviſion foreſaid, and the deſtr. &c.*

A And Women are not compellable nor diſtreinable to come unto the Sheriffes Tornes, nor to Leets, and if they be diſtreined they may ſue ſuch a Writ, as a Prieſt may ſue, and thereupon an *Alias*, a *Pluries*, and *Attachment*, &c. And becauſe that women are not ſworn in Leets as men who are of the age of twelve years or more are, It is ſaid, That when a woman is out-lawed, that ſhe is *Wayne*, and not out-lawed; For ſhe was never ſworn to the Law, &c. But a man is ſaid outlawed, becauſe he was ſworn to the Law, and now for his Contumacy he is put from the law, and ſaid Out-lawed, as it were *Extra Legem poſitus*;

positus; and a woman is not ſo, for ſhe was never ſworn to the Law.

And by the Rule of the Regiſter, two women may ſue that Writ unto the Sheriffs or Bayliffs of the Leet, that they do not diſtrein them to come to the Torn, or Leet, &c. B

See before 14 good Cases for their privileges. And if the Sheriff will diſtrein the Tenants in ancient demeaſn to come unto the Leet or Sheriffs Torn, They may have one Writ for them all directed unto the Sheriff commanding him that he do not diſtrein them, &c. to do any ſuit at the Leet or Torn; and that Writ ſhall be ſued in all their names if they will, as a *Monſtraverunt* ſhall be ſued; Or any of them may ſue the Writ in his own name if he be diſtreined to do ſuch ſuit; and the Writ is ſued. C

The King to the Sheriff, &c. Have ſhown unto us the men of the Mannour of D. which is of the ancient demean of the Crown of England, *that whereas they to the turn of the Sheriff, or view of Frankpleade without the Liberty of the Mannour aforeſaid, to come ought not, unleſs they or their Auncesteurs men, Tenants of the ſame Mannour to come accuſtomed, in the times by-paſt, thou notwithſtanding our men foreſaid to come to the Torn in* K. *or to the view of Frankpledge in our Hundred in* K. *againſt the Cuſtome in the ſame manner hitherto uſed, grievouſly diſtreineſt and thoſe many wayes upon that occaſion troubleſt leſs juſtly, to the manifeſt prejudice, and grievance of thoſe men and Tenants, and becauſe we will not that the aforeſaid men and Tenants be injured, we command thee that if ſo it be, then from ſuch diſtreſſes upon them for the cauſe foreſaid hereafter to be made altogether thou deſiſt, and thoſe their cuſtomes, which hitherto reaſonably they have uſed without impediment or claim to uſe and enjoy permit thou, that no plaint to us come therefore iterated. Witneſſe, &c.*

And if the Sheriff will diſtrein a man to do ſuit to the Hundred or Wapentake twice in the year to do things appertaining to that Leet, Then he ſhall have a writ upon the Statute of *Magna Charta* directed to the Sheriff which ſhall be ſuch. D

The King to his Bayliffes of the Wapentake of S. greeting; Whereas in the grand Charter of the Liberties of England *is con-*

contained, That no Sheriff nor his Baily ſhall keep his Torn in the Hundred but twice in the year, and but in the place due and accuſtomed, viz. once after Eaſter, and again after the Feaſt of St. Mich. and now of the plaint of the men and Tenants of the Abbot of C. we have received, that you thoſe men and Tenants in this part to grieve machinating, them to come to every our Wapentake foreſaid, to preſent there thoſe things which to the view of frank-pledge belong now a new grievouſly diſtrein, to the grievous damage and prejudice manifeſt, of thoſe men and Tenants, and againſt the tenour of the grand Charter foreſaid. we the ſame Charter in all things inviolably to be obſerved willing, command you that the ſaid men, and Tenants to come before you to the Wapentake foreſaid to preſent thoſe things which to the view of the frank pledge belong, againſt the tenour of the Charter foreſaid in no wiſe diſtrein, and the diſtreſs, if any, &c.

And by that it appeareth, That he ſhall not diſtrein to come to the Hundred to preſent a thing appertaining to the Leet but twice in the year; But to do ſuit at the hundred, to do that which appertaineth to the Hundred court, he may diſtrein them ſeveral times to do the ſuit, and they ſhall have no remedy, becauſe ſuit at the Hundred is from three weeks to three weeks.

Writ de Quarentina habenda.

THe writ of *Quarentina habenda* lyeth, where a man dieth ſeiſed of any Meſſuage and Lands, &c. and immediately after the death of the Husband, the heir or he who ought to have the lands after his death will put the wife out of the Meſſuage, &c. Then the wife ſhall have this Writ; for by the Statute of *Magna Charta*, cap. 7. the wife ſhall remain in the Capital Meſſuage after the death of her Husband by fourty daies, if it be not a caſtle; And that writ is vicontiel, and ſhall be directed unto the Sheriff, and he ſhall hold plea thereof; and the Writ is ſuch.

Ve. B. Appeal. 169. If the wife take Husband, ſhe ſhall not have this Action, no more then ſhe ſhall have an appeal. 1 Ma. 1. 97. ac.

The King to the Sheriff, &c. or his Bailies of S. greeting, of the plaint of B. which was the wife of D. we have received, that whereas in the grand Charter of the Liberties of England *is contained, that Widowes may tarry in the chief Meſſuage of their*

their Husbands by fourty daies after the death of their Husbands foresaid, unleſs those meſſuages be caſtles, within which time their Dowers ſhall be aſſigned them, and that in the mean time they ſhall have reaſonable eſtovers of their goods. J. of C. her B. preſently after the death of her Husband, out of the chief Meſſuage of the ſame D. in H. which was, though a Caſtle it be not, nor Dower to her aſſigned was violently caſt, and her eſtover of the Common to take permitteth not, to the no ſmal damage, and grievance of her B. and againſt the tenour of the Charter foreſaid, and becauſe the foreſaid B. we will not to be injured in this part, we command you, that calling before you the parties foreſaid, and hearing ſeverally their reaſons, to the ſame & full and haſty juſtice therupon to be done ye cauſe according to the tenor of the charter foreſaid, that for default of Juſtice the plaint may not come to us iterated, Witneſs, &c.

Quære, if an Enfant may keep the poſſeſſion during the time of Quarentine by force of the Statute of 8 H. 6. 4 & 5 Ma. Dy. 161. *Nota* by *Newton*. 19 H. 6. 8. The woman ſhall not have meat and drink, for the ſtatute doth not extend to it. But *Fitzherbert* in abridging the Caſe. *Quære*. if ſhe may not kil things for her proviſion, if there be not any proviſion in the houſe.

And upon that Writ the Sheriff ſhall award proceſs againſt the party to come, and anſwer the ſame; and ſhall not ſtay until the County Court be holden: For this writ is a Commiſſion unto him, and upon the ſame he ſhall immediately make proceſs againſt the party for to anſwer &c. within two or three dayes according to his diſcretion, and therupon to proceed as Juſtices ſhall do upon a Commiſſion of *Oyer* and *Terminer*, &c. A

Writ of Contribution.

THe Writ of contribution lyeth where there are tenants in common, or jointly hold a Mill *pro indiviſo*, and take the profits equally, and the Mill falleth into decay, and one of them will not repair the Mill; Now the other ſhall have a Writ to compell him for to be contributary to the Reparations; and the writ is ſuch. B

The King to the Sheriff, &c. If A ſhall &c. then ſummon &c. B. and C. that they be at W. &c. to ſhow, why whereas the ſame A. B. and C. a certain N. for individed hold, and the iſſues thence provenient, in equal portion take, and to the reparation and ſuſtentation of the ſame Mill are held, and

the

the ſame B. and C. although portion of thoſe iſſues then contingent they take, to the reparation and ſuſtentation of the foreſaid Mill to contribute refuſe, to the no ſmall damage, and grievance of him A. as he ſaith, and have there the ſummons and and this Writ.

And if there be three or four Coparceners of Lands, and the eldeſt ſiſter do the ſuit to the Lord of whom the lands are holden for all the Coparceners, and the others will not allow her for her charges, and loſſes according to the rate for the ſame ſuit; That Coparcener who did the ſuit may have this Writ of Contribution, and the writ is ſuch.

The King to the Sheriff, &c. If B. ſhall &c. then ſummon A. and J. his wife, and R. and F. his wife, that they be before our Juſtices, &c. to ſhow why whereas of the Common Counſel, &c. that if any inheritance, &c. as above to there, to be done hath been accuſtomed, and ſhe which hath the eldeſt part of that inheritance that ſuit ſhall do for her ſelf and her Coparceners of the ſame inheritance, and that the ſame Coparceners ſhall contribute to the doing that ſute, and a certain inheritance of C. in R. which was; for which one ſuit to the Hundred of J. of N. or to the Court of I. of N. onely is due to her B. and the aforeſaid A. I. R. and F. Coparceners of the Inheritance foreſaid is devolved, as we have received, and the foreſaid B. who hath the eldeſt part of that Inheritance that ſuit doth to the Hundred foreſaid, or to the Court aforeſaid, for her ſelf and the foreſaid A. I. R. and F. her Coparceners of the ſame A. I. R. and F. to the doing that ſuit to contribute refuſe, to the grievous damage of her B. and againſt the form of the proviſion foreſaid, as ſhe ſaith and have, &c.

And if there be many Coparceners and the eldeſt do the ſuit, and the other Coparceners agree with the eldeſt for a Rate; Now the writ of Contribution ſhall be brought againſt the others, who would not contribute, &c. And if many be enfeoffed of Land, for which one ſuit ought to be done, &c. Now if they agree amongſt themſelves, that one of them ſhall do the ſuit, and that the others ſhall contribute unto him, if he do the ſuit, and afterwards the others will not allow him for that ſuit according to their rate, Then he ſhall have the writ of Contribution againſt them, and the writ ſhall mention the agreement, &c. and if they cannot agree, then the Lord ſhall diſtrein them all

for

for all their ſuits, if the ſuit be not done; But if one Feoffee of his own will do the ſuit for them all, without any agreement for the ſame made between them, The Lord cannot then diſtrein the others for the ſuit; for as to the Lord it is not material whether there be any agreement between them or not; but between the Feoffees he that did the ſuit ſhall not have the Writ of contribution againſt his companions, with agreement thereof made betwixt them. But if one joint Tenant do make a Feoffment in Fee of his part, his Feoffee ſhall do a ſeveral ſuit by himſelf. But the other joynt Tenants ſhall do but one ſuit by the Statute of *Marlebridge*, cap. 9. But every D Tenant in common ſhall do ſeverall ſerviees and ſeverall ſuits. And the proceſs in this Writ is Summons, Attachment, and Diſtreſs.

Writ de Contra formam Feoffamenti.

L. 5. E. 48 5. Br. cont. formam feoffamenti.

THe Writ de *contra formam feoffamenti* lyeth, where a man E doth enſeoff another before the Statute of *Quia emptores terrarum*, to hold of him by Homage fealty, and Rent by deed, and afterwards he will diſtrain for ſuit or other ſervices to be done unto him; He who was enfeoffed, or his heir, ſhall have this Writ of *contra formam Feoffmenti*, &c.

And this writ may be directed unto the Lord himſelf, or F unto his Bayliffes, commanding them that they do not ſtrain him againſt the form of his grant; and this writ is a [163] prohibition in it ſelf. And if the Lord and Bayliffs do con- A trary to the writ ſent to them, the Tenant thereupon ſhall have an Attachment, and a Diſtreſs: and the form of the Writ is ſuch.

The King to I. *or the Bailies of* I. *greeting: whereas of the* B *Common, &c. provided it be that none by occaſion of their tenements be diſtrained, to make ſuit to the Court of their Lords, unleſs by form of their feoffment to that ſuit ſpecially they are bound, or they or their Anceſtors thoſe tenements holding it, have uſed to do before the firſt voyage of the Lord Henry King into Brittain, thee, or you we command, that thou diſtrain not, or ye diſtrain not* A. *to do that ſuit to thy Court of* I. *or to the Court foreſaid, of the Lord of* N. *againſt the form of*

of the provision foresaid, and that distress, &c.

C And no person shall have this Writ of *Contra formam feoffamenti*, but he who was enfeoffed, or his heirs who were privies to the deed, But if the Feoffee to whom the lands were given to hold of the feoffer, and his heirs by the deed, make a feoffment over to hold of the chief Lord, &c. The Feoffee shall not have this Writ *de contra forman feoffamenti*, because he is not party or privy to the deed, but he shall rebut the Lord by that deed, to claim other services then are mentioned in the deed, And that Writ is a pro-

D hibition unto the Lord and his Bayliff, ; and if he do distrain after the writ delivered to him, the tenant shal have an Attachment against him, and thereupon he shall recover his damages, if it be found for him, &c. and the parties prohibition, Attachment and distress.

14 H. 4. 5. Thirning. old N. B. 104. If a man hath not a deed, then he shal not have this writ but is put to his al injuste Vexos L. 5. E. 487. Br. Contr. formam. Feoffamenti. 1.

And the rule in the Register is: if any for suits undue a-

E *gainst the form of any Statute, to the Court of any to be done be distrained, he may have a prohibition against the distrainer, and after an Attachment if need be:* And afterwards Attachment, nor can he be attached, unless a prohibition be first directed unto him.

And the opinion of *Parning* is, P. 10. E 3. That if a

F man give land in Frankmariage, or Frankalmoign, that the donor shall not have a writ of *Contra formam feoffamenti*, nor his heirs, because there are not any services expressed in the deed, for which reason he is out of the Statute of *Marlebridge*, Cap. 9. but they may rebutt the Lord by such deed.

And if the Lord confirm the estate of the Tenant to hold

G by lessor services, &c. the Tenant shall have a writ of *contra formam feoffamenti*; if he be distrained for more services then there are specified in the deed of Confirmation. M. 16. E 3. Avoury 243.

And in a *Contra formam feoffamenti*, the person did count

H upon the deed, and the distrainer demanded over thereof, and could not have it. M 3. E 2. Accon. sur. le Case. 5.

And the *contra forman feoffamenti*, hath only against the

I Feoffer and his heirs.

Writ de Coronatore eligendo vel exonerando.

4 E. 4. 44. THe Writ *de Coronatore eligendo* lyeth, where a man K who is Coroner of any County dieth, or be discharged of his office, then that Writ shall be awarded unto the Sheriff, that he in full Conuty by the free-holders of the County choose another in his place, and to certifie the Election, and his name who is chosen into the Chancery.

And in every County commonly there are four Coro- L ners, and in some Counties six Coroners, and in some Counties less as the usage is; and if any of them dieth, or is discharged, then shall issue such Writ.

The King to the Sheriff, &c. Because L. lately one of our M *Coroners in thy County is dead, we command thee that if so it be, then in thy full County by the assent of the same County, in the place of him L. to be chosen, thou cause another Coroner, according to the form of the Statute thereupon set forth, and provided, who having taken his Oath as the manner is, thence forward those things shall do, and keep, which to the office of the Coroner belongeth in the same County; and such him to be chosen cause, who best shall know, and may that office intend, and his name make known to us, witness, &c. and now it appeareth by* thy Writ, that upon the Election made, shall give him his oath duly to execute his office, Ve. Stat. Westi. 1. cap. 10.

2. 5. E. 4. 2. ac. by our judg. Coroner, shall not be discharged by demise of the King because he is made by Writ contr. of others, who are by commission. 4 E. 4. 44.

And the Coroner shall be discharged of his office, by N the Kings Writ sent unto him, and thereupon shall issue another Writ directed unto the Sheriff to choose a new Coroner, and that VVrit shall recite the cause of the discharge of the other Coroner: And the Writ shall be such.

The King to the Sheriff, &c. Because R. one of our Coro- *ners of thy County diverse our business in thy County to do so occupied is, that those things which to the office of a Coroner in the same County belong, to exercise he cannot be at leasure, as for certain we have understood; him from that office we have removed, We command thee that one other Coroner, &c. as above: Or thus. Because from testimony we have received worthy*

worthy credit, that VV. T. one of our Coroners of thy County ſo languiſhed it, and with old age broken, that to thoſe, &c. to be exerciſed he is not ſufficient, him VV. we have thought fit from that office to be removed, and therefore we command thee, &c. Or thus: Becauſe VV. one of our Coroners, &c. leſs apt is that office to execute, as from the relation, &c. Or thus: Becauſe We have received that VV. Coroner of the County aforeſaid, lately choſen lands or tenements in the ſame County hath not, upon which according to his State he abide might the aforeſaid Office to exerciſe, We command thee, &c.

Or thus: Becauſe A. one of the Coroners, &c. with the palſy is ſtruck. &c. Or, becauſe in the out parts of the whole County he abideth, wherefore thoſe things which to the office, &c. commodiouſly exerciſe he cannot: Or, becauſe to the office of Sheriff of the aforeſaid County he is choſen, or verdour of our Foreſt of S. choſen he is by which, &c. as becauſe he hath not one hundred ſhil. of lands as is ſaid, Or becauſe he is no Knight, &c.

But it ſeemeth that at this day, this laſt clauſe is not cauſe for to remove the Coroner, for if he have ſufficient Lands within the County, it ſufficeth, although he be not a Knight, notwithſtanding the ſtatute which requireth that he be a Knight; for thoſe words we put into the Statute, to the intent that he ſhould have ſufficient within the County, and for no other cauſe: And it ſeemeth the King by his VVrit may command the Sheriff to chooſe, two, or three Coroners, if there want ſo many in A the County. [164]

And if the Sheriff chuſe one to be Bayliff of the Hundred, or Wapentake; Or if the Lord of a Liberty chooſe one to be Bayliff of the Liberty, who hath not ſufficient land within the County, according to the Statute of *Weſt.* 2. (but ſee the ſtatute of 2. *Ed.* 3. cap. 4. thereof) then a Writ ſhall be ſent unto the Sheriff for to diſcharge ſuch Bayliff, and to chooſe another in his place, and upon that a man may have an *Alias*, and a *Pluries*, and Attachment againſt the Sheriff, that he do not according to the writ; and the writ is ſuch.

The King to the Sheriff, &c. whereas in a certain Statute at Weſtm. lately ſet forth is contained, That no man ſhall be Sheriff or Bayliff of a Liberty, Wapentake, Hundred, nor

tything, unleſs he have Land and Tenements ſufficient in the ſame County, whence us or our people in this part he may anſwer, if any will complain againſt him: and now we have underſtood that VV. *of* T. *who lands or tenements in the ſame County hath not, Baily of our Wapentake of* B. *thou haſt made in contempt of us, and to the no ſmall loſs and grievance of our people in this part, and againſt the form of the Statute foreſaid. And therefore we command thee that if ſo it be, then him* VV. *from the Bail. foreſaid, without delay thou to be amoved cauſeſt, and another in his place competent to be ſet and ordained, according to the form of the Statute foreſaid, witneſs, &c.*

Writ de Electione viridariorum foreſtæ.

THe Writ of Election of the Verderors of the Forreſt, C hath, where any of the Verderors are dead, or removed from their offices, &c. Then the King ſhall ſend a Writ to chooſe another in his place, and it ſhall be directed to the Sheriff, and is ſuch.

The King to the Sheriff, &c. Becauſe A. *lately one of our Verderours of our foreſt is dead, as we have received, therefore we command thee that if it be ſo, then in thy full County with the aſſent of the ſame County, in the place of the foreſaid* A *to be choſen, thou cauſeſt one other Verderour, who taking his oath as the manner is, thence forward thoſe things ſhall do and conſerve, which to the Office of a Verderour belong in the forreſt foreſaid, &c.*

And by that it appeareth that the Verderor ſhall be choſen in the manner as the Coroner of the County ſhall be choſen by the Free-holders of the County.

D

And if a Coroner or Verderour be diſcharged of his Office by falſe ſuggeſtion by the Kings writ directed to the Sheriff, then the party may come into the Chancery and require a commiſſion to enquire of the ſaid falſe ſuggeſtion, and to return the enquiry before the King into the Chauncery; or the Juſtices of the Forreſt may certifie the King of the falſe ſuggeſtion under their ſeals; and if it be found to be falſe, then the King may make a *Superſedeas* to the Sheriff, that he do not remove the venderors if &c. And if he be removed that he ſuffer him to exerciſe his office as he did before, and the Writ is ſuch.

The

The King to the Sheriff, &c. although it hath been ſugg. to us in our Chancery that A. one of our verderours in our Forreſt of S. hath not Lands or Tenements within the Limits of the Forreſt foreſaid, nor within the Forreſt foreſaid did abide, we command thee that if ſo it were then in thy full County with the aſſent of the ſame County in the place of the foreſaid A. thou ſhould cauſe to be choſen one other verderour, who taking his oath as the manner is, thenceforward thoſe things ſhall he do and conſerve, which to the Office of a Verderour belong, in the Foreſt foreſaid, yet becauſe it is certified before us in our Chancery by our belsved and truſty G. of S. Juſt. of our Foreſt beyond Trent, *that the ſame A. Lands, and Tenements hath ſufficient within the Foreſt foreſaid and able and ſufficient for that Office aboveſaid, we not willing him A. from that Office by occaſion of this falſe ſuggeſtion to be amoved, command thee, that execution of our writ aforeſaid by occaſion of the falſe ſuggeſtion foreſaid to thee directed, thou ſurceaſe altogether, and that the foreſaid A. that Office to exerciſe thou permit as hitherto to be done hath been accuſtomed. witneſs, &c.*

Writ for the Election of the Clark to take Obligations upon Statute Merchants.

THe Writ for the Election of the Clark aſſigned to take and make obligations thereof by Statute Merchant lyeth where the Clark who is aſſigned to take ſuch Obligations, dwelleth in another place, or is buſied in other affaires that he cannot intend or follow the Office, or that he hath not ſufficient lands, &c. to anſwer for his miſdoings, then upon a Surmiſe made in the Chancery, ſuch Writ ſhall be made directed, unto the [165] Mayor or Bayliff to diſcharge him, and to chuſe another, *viz.*

The King to his Bailies, and to the honeſt men of the Town of H. greeting. becauſe by the relation we have received of very many that R. who the cuſtody of the greater piece of the ſeal, according to form of the Statute of Acton Burrel in the town foreſaid to take deput. now hath, in the town foreſaid abode maketh not, by which thoſe things which to his Office belong to do intend he cannot, to the no ſmall loſs and grievance of the Merchants and other to the town aforeſaid

haunting, we command you that if so it be, then in the place of him R. to be chosen thou cause one other man of the town foresaid, that said piece to keep and those things which to that custody belong to do better knoweth, and can intend, and us of the name of him whom so you shall chuse, under the Common seal distinctly, and openly without delay ascertain, This Writ to us sending back, witness, &c.

And it appeareth by the Statute *de Mercatoribus*, That the King shall make the Clark, and by it appeareth, That the Mayor or Bailies shall choose the Clark, &c. but it seemeth that Writ is granted *ex gratia Regis*, for he might send a Writ of discharge unto the Clark, and make a new Clerk (as it seemeth) at his pleasure.

Writ de non ponendis in assisis & juratis.

THat Writ *de non ponendis in assisis & juratis* is grounded upon the Statute of *West.* 2 *cap.* 38. and upon the Statute of *Articuli super cartas, cap* 9. which Statutes declare what persons the Sheriffs ought for to enpannel, and what number he ought to enpannel in Juries and Inquests, and the writs declare the effects of the Statutes and the Writ shall be such. A

33 E. 3. 15. One was chosen by 4 Knights in a Writ of Right upon the Grand Assise and after he allowed a Charter of Exception *de non ponendis, &c.* and it was not allowed the same suit in Attaint.

The King to the Sheriff. Whereas amongst other articles which the Lord Edward *heretofore King of* England, *&c. for the amend. the State of the people of his Realm, hath ordained, it is granted that no Sheriff nor Baily shall put in inquests, nor Juries, more men, nor others, nor in another manner then is ordained by the Statute, and he that puts in Inquests and Juries, such men as are nearest, most sufficient, and least suspected; And he that shall do otherwise, and he thereof convicted, shall render to the plaintiff his damages double, and be grievously amerced to us; We command thee that in the Jury of twenty four Knights which* H. T. *of* K. *hath arraigned before thee, &c. by our Writ against* V V. E. *to make convict the Jurors of the Ass. of Novel disseisin, which betwixt him* V V. *and the foresaid* H. T. *and others in our Original Writ Contein. Sum. was and taken at* E. *by our writ before us of the Tenements in* C. *men to that venew nearest, most sufficient and least*

leaſt ſuſpected, by whom the truth of the matter better known may be, and enquired, to be put thou cauſe, according to the form of the Articles aforeſaid, and this by no means omit.

B And by this writ it appeareth; When a man ſueth an Aſſiſe or Attaint, or ſuch actions, in which are Jurors at the firſt day, &c. That he may alſo ſue this writ directed to the Sheriff, that he return the pannel according to the Statute; And if the Sheriff do not accordingly, then C it ſeemeth the party ſhall have an attachment againſt the Sheriff, And this writ may be ſued as well by the Defendant as by the Plaintiff or Demandant, and alſo although that the party do not ſue forth the writ, yet if the Sheriff or Bayliff of the Liberty return a pannel againſt the form of the Statute, the party defendant or plaintiff may have an action upon the Statute againſt the Sheriff, &c. becauſe the Statute is a prohibition in it ſelf; and the form of the writ of Attachment upon the ſame is ſuch.

The King to his Coroners in the County of Lincoln, &c. put by gages, &c. B. our Sheriff of the County aforeſaid that he be to ſhow why, whereas amongſt other Articles, &c. unto grievouſly amerced and we lately at the proſecution of H. affirming that a certain Inqueſt ought to be taken before our Juſtice foreſaid of the Plea which was before the ſame Juſtice, by our Writ, betwixt R. demand. and T. Tenant of the Manour of S. with the appurtenances, we command the foreſaid Sheriff that in that Inqueſt men neareſt, moſt ſufficient and leaſt ſuſpected he ſhould put, according to the form of the Statute and Articles foreſaid, the ſame Sheriff in the ſame Inqueſt, men moſt remote, leaſt ſufficient, and moſt ſuſpected hath put, againſt the form of the ſame Statute, and articles, and againſt the tenour of our Command foreſaid as is ſaid, and have.

D And by the Statute of Weſt. 2. aforeſaid, The Sheriff ought not to enpannel men who are ſick or decrepit, nor men who at the time of the Summons were not dwelling within the County, nor men above the age of threeſcore and ten years, &c. and if he do, then he, or thoſe who are enpannelled by the Sheriff may ſue this writ unto the Sheriff commanding him that he do not enpannel them, &c.

And Barons who are Lords ſhall not be enpannelled upon Iequeſts nor Aſſiſes, &c. if their preſence be not neceſſary, but they ſhall have a Writ unto the Sheriff to diſcharge them, thus.

47 E. 3. 10. 27 H. 8. 22.

The King to the Sheriff, &c. becauſe the Barons of our Realm in Aſſiſes, Juries, or Recogniſances have not uſed to be put as is ſaid, unleſs their oath be ſo neceſſary that without them the truth cannot be enquired, we command thee that our beloved and truſty A. in any Aſſiſes, Juries, or Recognizances thou put not nor cauſeſt to be put, againſt our will without our mandate ſpecial, unleſs his preſence for any cauſe ſpecially be required, witneſs, &c. E

[166]

But if the Sheriff hath returned any Lord in Juries or Aſſiſes, &c. then he ought to bring a writ unto the Juſtices, reciting that he is a Peer of the Realm, commanding them for to diſcharge him, otherwiſe he ſhall be ſworn, and if he do not appear he ſhall loſe iſſues, &c.

There are alſo otherwrits for thoſe who are ſick, or paſt 70. years of age, or thoſe who are not dwelling in the County; and the writ is ſuch. A

The King to the Sheriff, &c. Whereas of the Common Counſel it is provided that men perpetually languiſhed, Or thus, that men at the time of Summons by the Sheriff in the County not dwelling. Or thus. That men who the age of ſeventy years exceed, be not put in Aſſiſes, Juries, &c. we command thee that if A. be perpetually languiſhed: Or thus, the age of ſeventy years exceeding. Or at the time of thy Summons in thy Bayliwick or in thy County not dwelling, then him, &c. many aſſiſes, Juries, or recognizances, put thou not, or to be put cauſe againſt the form of the proviſion foreſaid, witneſs, &c.

Clerks who have Lands or Tenements by diſcent or purchaſe may be put and ſworn in Aſſiſes and Inqueſts as well as other Lay perſons as appeareth by the Regiſter, and it ſeemeth the Law is ſuch. But if ſuch Clerk be in the Kings ſervice, he ſhall have a ſpecial writ for to diſcharge him, and the writ is ſuch. B

The K. to the Sheriff, &c. becauſe maſter R. Clerk in our ſervice, or in the ſervice of the venerable father, I. Biſhop of Ely theſe daies abideth continually as is ſaid; we command thee that him K. by occaſion of the Lands and Tenements which he holdeth in the County aforeſaid, in any Aſſiſes, Juries, or Recogniſ.

cogniſ. thou put not, or to be put cauſeſt while in our ſervice, or of the ſame Biſhop, he continueth as aforeſaid, Witneſſe, &c.

And by the writ it appeareth, that a Clerk ſhall be put, and retorned in pannels and Juries, if he be not in the ſervice of the King or other perſon for whom the King will write to the Sheriff, that he do not enpannell him, &c. But if the Sheriff do enpannel and retorn ſuch Clerks, they ought for to appear, otherwiſe they ſhall loſe iſſues, and they have no remedy if they have not ſuch writ as before.

C And if the Sheriff do enpannel, or retorn them in Juries after ſuch Writ directed unto him, then as ſeemeth, They ſhall have Attachment againſt the Sheriffe, &c.

D But if the Sheriff do retorn men who are dwelling in other Countries, or paſt 70 years age, or thoſe who are ſick, then they ſhall have an Action upon the Statute againſt the Sheriff, although they have not ſued forth ſuch writ directed to the Sheriff, becauſe the Statute is a Prohibition to him, that he retorn not ſuch perſons, and it ſeemeth, The Sheriff is bounden to take notice of the Satute at his peril; *tamen Quære.*

And if the Sheriff do retorn any pannel men who are not ſufficient to paſs in the Action of lands and Tenements, &c. then the Juror may have an Action upon the Statute; which is ſuch.

The King to the Sheriff, &c. whereas to the Common profit of the people of our Realm, of the Common Councel of the ſame Realm it is appointed, That no man be put in any Aſſiſes, Juries, or Recogniſances unleſs he have lands and Tenements to the value of XL. s. by the year at the leaſt, yet ſo that before the Juſtice itinerant, at the Common Pleas, in their Eyres, and alſo in Aſſiſes, Juries, and Recogniſances which in Cities, Boroughs, and other Towns amongſt Merchants fall out to be made, ſhall be done as hitherto before hath been accuſtomed. We command thee that if A. lands and Tenements to the value of ſo much by the year hath not then him A. in thoſe Aſſiſes, Juries, or Recognizances thou put not, or to be put cauſeſt, againſt the form of the Statute &c.

E And if the Sheriff do the contrary, &c. he ſhall have an Attachment againſt the Sheriff. And by the Statute the

the Sheriff ought not to enpannel any Juries to try any matter which ſhall be tryed out of the County, if they may not expend five pound by the year, &c. And if he do the party ſhall have an action upon the Statute of 21 *E.* 1. *de ponendis in Aſſiſis & juratis.*

And if the Sheriff retorn on any pannel men who dwell within antient Demeſn for their lands within antient Demeſn, then they may have a writ againſt the Sheriff, that he do not retorn them, and the writ is ſuch. F

The King to the Sheriff, &c. whereas according to the law and Cuſtome of our Realm hitherto obtained, and approved, the men and Tenants of the Mannours which are of the Antient demean of the Crown of England *for lands, and Tenements which they hold of the ſame demean in any Aſſiſe, Jury, or Recogniſances to be put ought not to be, unleſs in theſe which in the Court of ſuch Mannour ought to be made, we command thee that our men, and Tenants of our Mannour of I. which is of the ancient demean of the Crown of* England, *as is ſaid, for the lands and Tenements which they hold of the ſame Mannor in any aſſiſes, Juries or Recognizances out of the Court of the Mannors foreſaid thou put not, or to be put cauſeſt, againſt the Law and Cuſtome foreſaid, unleſs Lands and Tenements of another tenure they hold, by which according to form of the Statute of the Common Councel of our Realm therefore provided, in Aſſiſes, Juries, or Recognizances, they ought to be put, and the diſtreſs if any upon the ſame men, and our Tenants on the occaſion foreſaid, thou haſt made without delay releaſe to the ſame, witneſs, &c.*

[167] And by that writ appeareth, That all the Tenants may ſue the writ, as they may ſue forth a *Monſtraverunt*; and if the Sheriff do contrary to the writ, they ſhall have an Attachment againſt him, and any of the Tenants may ſue the Writ in his own name if he will; and then the writ ſhall be ſuch.

The King to the Sheriff, &c. as above, to. *We command that A. Tenant.* Or thus; *A. and B. Tenants of the Mannor of N. which is of the ancient demean, &c.* as above.

And although that the Mannour be not in the Kings hands; yet the Tenants ſhall have the writ againſt the Sheriff if he enpannel them, &c. And alſo they ſhall have the ſame writ againſt the Bayliffs of the Liberty who have retorn

retorn of writs, if they retorn any of the Tenants who hold of a Mannor which is antient Demeſn or Juries, Aſſiſes, or Inqueſts, &c.

And alſo the Sheriff ought not to retorn Coroners in Aſſiſes, Juries, or Inqueſts, nor Verderours, nor Foreſters, nor other Officers of the Forreſt, and they may have a Writ for to diſcharge them; and the writ ſhall be ſuch.

The King to the Sheriff, &c. Becauſe A. *one of our Coroners of thy County thoſe things which to the Office of a Coroner belong in the ſame County to exerciſe cannot intend, if in any Aſſiſes, Juries, or recognizance out of the ſame County he be put, we command thee that if ſo it be, then* A. *in any Aſſiſes, Juries, or recognizance out of thy County thou put not, or to be put cauſeſt, that he might be leſſe able to intend his Office aboveſaid.*

And by that it appeareth, That the Sheriff may retorn the Coroner to enquire of affaris in the County before Commiſſioners or Juſtices of the Peace; But upon Actions ſued in the Common Pleas, or Kings Bench, they ſhall not be returned in any pannel. And for Verderors, or Foreſters, or other Officers, the writ is ſuch.

The King to the Sheriff, &c. whereas the Lord Edward *heretofore King of* England, *our Progeniter by his Letters patents hath granted for himſelf and his heirs, that Foreſters, Verderours, or other Miniſters of his Foreſt, ſhall not be put in any Aſſiſes, Juries, or Recogn. without that Foreſt to be taken, we command thee, that if H. our Verderor of our Forreſt of S. be, or Forreſt. &c. then him H. in any Aſſiſes, Juries, or Recogn. without that foreſt to be taken thou put not, or to be put cauſeſt, according to the form of the proviſion foreſaid, and the diſtreſs if any, &c.* Or thus, *Becauſe one of our Verderors of our foreſt of S. in thy County theſe things which to the Office of a Verderor belong in the ſame forreſt to exerciſe, cannot intend, if in Aſſ. &c. he be put without the foreſt foreſaid, we command thee, as above.*

IF a man do retain my ſervant being in my ſervice for B
which the ſervant departeth from me, &c. and goeth to ſerve the other, I ſhall have an action againſt him who retained him, and againſt the ſervant upon the Statute of 23 E. 3. And the writ ſhall be Attachment againſt them, becauſe the Statute is a prohibition to them, that they ſhall not do ſo; and the form of the Writ is ſuch.

The King to the Sheriff, &c. If A. *ſhall &c. then atta h* J. *of* B. *that him thou have before our Juſtices &c. to anſwer as well us as the aforeſaid* A. *why whereas by us, and our Councel for the common profit of our Realm it is ordained, That if any Mower, Reaper, or other Labourer, or ſervant of whatſoever eſtate or condition he ſhall be in the ſervice of any man retained before the end of the term agreed on, from the ſaid ſervice with ut cauſe reaſonable, or Licence ſhall depart, pain of impriſonment he ſhall undergo, and no man under the ſame pain ſuch into his ſervice to receive, or retain ſhall preſume, nor ſhall any greater wages, Liveries, Rewards, or Salaries, then were accuſtomed to be given the 20 year of the Reign of our Progenitor King* Edw. 3. *or the Common years five or ſix next precedent, to any ſervant pay or promiſe to pay, under pain of the double of that which ſo paid or promiſed ſhall be, to him who herewith ſhall find himſelf grieved, p'yrg the foreſaid* J. R. *of* C. *lately ſervant of the foreſaid* A. *in his ſervice at* B. *retained, who from the ſame ſervice, before the end of the term betwixt them agreed, promiſe being made by him* J. *more Salary then was accuſtomed to receive, without cauſe reaſonable, and the Licence of the foreſaid* A. *departed, to the ſervice of him* J. *although he the foreſaid* R. *to the ſame* A. *to reſtore was required, hath admitted, and retained, in contempt of us, and grievous damage of him* A. *and againſt the form of the Ordinance foreſaid, attach thou alſo the foreſaid* R. *ſo that him thou mayeſt have there, to anſwer as well us as the foreſaid* A. *why from the ſervice of the ſame* A. *without cauſe reaſonable, and his Licence, as aforeſaid he departed, in contempt of us, and to the grievous damage of him* A. *and againſt the ordinance foreſaid, and have there this Writ, Witneſs &c.*

And

C And if a man be required to serve, and hath not lands nor tenements to live upon, nor other Art or Trade, and he refuseth to serve, then he who requireth him to serve, shall have this writ.

The King to the Sheriff &c. If W. &c. then attach R. that him thou maiest have before our Justices &c. to answer as well us, as the aforesaid W. *why whereas by us and our Council for the Common, &c. as above, to there, Ordained it is that every man and woman of our said Realm of what condition, soever he shall be, free, or servile, able in body, and within the age of sixty years, not living by Merchandise, nor exercising a certain craft, nor having of his own whereupon he may live, nor having land of his own about the tilling of which he may occupy himself, and not serving another, if to serve in a service fit his estate considered he shall be required, to serve is bound, him who first requireth it, and shall receive onely wages, Liveries, Rewards, or Salaries, which in the places where to serve he ought were accustomed to be given the 20 year of the Reign of King* Ed. *the third, or the Common years five, or six preceding, and if such man or woman so to serve required, this will not do, he shall be presently taken, and sent to the next Gaole, and there under straight custody abide, untill surety he find to serve in the form aforesaid, the same* R. *of such condition being the foresaid* W. *although he to serve the same* W. *for a Salary to his estate competent, the said Common yeares precedent accustomed often required hath been, altogether to serve refused, in contempt of us, to the grievous dammage of him* VV. *and against the form of the Ordinance foresaid, and have, &c. witness, &c.* [168]

A And if the servant be retained in Winter to serve, and after he will depart from his Master in the Summer, and serve in another place, Then he whom he served in Winter shall have a writ to compell him to serve him in the summer, which is such.

The King to the Sheriff, &c. If VV. *of* C. *&c. then put* I. *of* S. *that he be &c. to answer as well us as the foresaid* VV. *of* C. *why whereas by us and our Councel for the Common profit of our Realm, it is appointed, that no servant of whatsoever estate he shall be, or condition, out of the Town where he abideth in Winter, to serve elsewhere in Summer, if service in the same Town he may find, under pain of imprisonment shall go, except that the men in the County of* St. ff. Lanc. *and*

and Darby, *and of the March of* Wales, *in the time of* Auguſt, *to labour in other Counties may come ſafely, as hitherto they have uſed to do, and return the foreſaid J. in the ſervice of him* W. *at* F. *in Winter lately retained, him* W. *or any other in the Town foreſaid, though he to ſerve in the ſame Town, for competent Salary often was required, to ſerve hath refuſed, in contempt of us, and to the grievous damage of him* A. *and againſt the form of the Statute foreſaid, and have there the names of the pledg. and this Writ. Witneſs &c.*

B The Lords of Dowers, or Juſtices of Peace, may commit Vagrants to priſon, if they will not ſerve; and they may command the Gaoler to ſet them at liberty, without any other Writ.

C And if a man be retained in ſervice, and go wandring abroad out of his ſervice, another man may compell him to ſerve him, &c. becauſe he is out of ſervice.

And ſo if a man do retain anothers ſervant, not knowing that he was in the ſervice of the other, he ſhall not be puniſhed for ſo doing; if he do not retain him after notice of his firſt ſervice.

D An Infant of 12 years of age ſhall be bound by his Covenant to ſerve in husbandry.

A Woman of ſuch age ſhall be alſo bound to ſerve in Husbandry by her Covenant.

If a man take an Infant or other out of anothers ſervice, he ſhall be puniſhed; although the Infant or other were not retained.

An Infant by his Covenant ſhall be bounden to ſerve in Husbandry, although he may ſpend 40 s. or 10 Marks by the year.

E And ſo a Gentleman by his Covenant ſhall be bound to ſerve, although he were not compellable to ſerve: For if a Gentleman, or Chaplain, or Carpenter, or ſuch which ſhall not be compelled to ſerve, &c. yet if they covenant to ſerve, they ſhall be bound by their Covenant; and an action will lye againſt them for departing from their ſervice.

F And if a man do retain one to ſerve him for 40. daies, and another doth afterwards retain him to ſerve him for a year, the firſt Covenant is avoided, becauſe the Retainer was not according to the Statute.

And

And ſo if a man be retained to ſerve at every time he ſhall be required, it is no Retainer according to the Statute, but a Covenant if it be by deed; and without deed it is void.

G And a man ſhall not have an action againſt the Apprentice upon his departure, upon the Statute.

H And if a man do retain one to ſerve him, and doth not expreſs for how long he ſhall ſerve him, he ſhall ſerve him for a year; for that retainer is according to the Statute.

If a man who is not to have any ſervant, do retain one to ſerve him, &c. the retainer is void.

I He who hath not ſufficient lands of his own to occupy ſhall be compelled to ſerve.

K And a man may retain one for two or three years, and it is good.

L And keeping from the ſervant meat and drink, is a good cauſe for his departure from his ſervice.

And ſo for Battery, or Licence to depart, is a good cauſe or departure.

M The Lord may take his Villeyn out of the ſervice of another, if he hath need of ſervants; otherwiſe not.

N If a woman who is a ſervant doth marry, yet it ſeemeth ſhe ought for to ſerve.

O If the husband and wife be retained in ſervice during their marriage, &c: if they do depart from their ſervice, an action upon the Statute lyeth againſt them.

P If the ſervant be drawn away, the maſter may re-apprehend him, and keep him in ſpight of him.

Q If the Maſters Wife do beat the Servant, it is a good cauſe for the Servant to depart and leave his ſervice.

Writ de reſtitutione temporalium.

THe Writ of Reſtitution of the Temporalties lieth, in A
caſe a ſpiritual perſon be elected a Biſhop, and conſe-
[169] crated, &c. Then he ſhall have the Writ unto the Elchea-
tor, &c. And ſo is it of an Abbot or Prior, which is of
the Kings Foundation, and ought to have the Kings Roy-
al aſſent, &c. when he is elected, and eſtabliſhed Abbot
or Prior, he ought to ſue a Writ to be reſtored unto the
Temporalities; and the form of the Writ for the Prior is
ſuch.

The King to his Eſcheator in the County of Devon, *greeting. Whereas the Venerable Father* H. *of* Exet. *Biſhop, the election lately made in the Covent Church of* P. *of our beloved in Chriſt Frier* J. *of* C. *Canon of the ſame Houſe to be Prior of that place, to which firſt our Royal aſſent we have given, and favour hath confirmed, as by the Letters Patents of him the Biſhop to us thereupon directed to us appeareth, we that confirmation accepting, have taken the fealty of him the elect, and the Temporalities of the Priory foreſaid as the manner is have reſtored to the ſame, and therefore we command thee, that to the ſame elect the Temporalities of the Priory foreſaid thou deliver eſt in form foreſaid.*

And by that Writ appeareth, when a Priory or Abbey is B
void which is of the Kings foundation, that they ought for
to have the Kings Royall aſſent to go to the election; and
after the election made, the Biſhop ought to confirm the
Election, and to certifie the King thereof by his Letters,
and thereupon the King to take his Fealty; and he to
grant this writ to reſtore the Temporalties.

And there is another Writ when the King granteth one-
ly his aſſent to go to the Election, and to make the Prior
without any certificate made before of the Election; and
the Writ is ſuch.

*The King &c. Whereas the Venerable Father, &c. Or be-
loved in Chriſt, Frier* C. *of* B. *Canon of the ſame houſe, to
be Prior of that place elect, to which Election firſt our Royall
aſſent we have given, and favour, to be Prior of the ſame place
and Paſtor hath placed, as by the Letters Patents of him the
Biſhop to us thereupon directed to us appeareth. We that
perfection accepting have taken the Fealty of him the præ-*

fect

ſeſt, and the Temporalties of the Priory foreſaid, &c. As above.

C And the Prior ſo elected and eſtabliſhed, may have a Writ out of the Chancery, directed unto the Tenants of the Priory, that they do accept him for their Prior and Lord, *&c.* and that they be Attendants *&c.*

D And where the Prior or Abbot ought to have the Kings Royal aſſent, to go to Election, and obtain the ſame, and afterwards make the Election, and the Biſhop doth avoid it, and afterwards they ſubmit unto the Award and Arbitrement of the Ordinary, to name to them one to be Prior, *&c.* and make him Prior, and certifie the King thereof by his Letters; the King thereupon may grant ſuch Writ, *viz.*

The King, &c. Whereas the Venerable Father I. *of* Winchester, *Biſhop, the election lately made in the Church of St.* D. *near* S. *of our beloved in Chriſt, Frier* T. *of* N. *Canon of the ſame houſe to be Prior of that houſe quaſhed, and by vertue of the ſubmiſſion of the Covent of the place foreſaid to him made, of providing the ſame Priory, a fit Prior that time, our beloved in Chriſt, Frier* I. *of* W. *Canon of the ſame Priory, to be Prior of that place hath placed, and Paſtor, as by the Letters Patents of him the Biſhop to us thereupon directed, to us appeareth, we with the ſame* I. *willing graciouſly to deal, have taken the Fealty of the ſaid* I. *and the Temporalty of that Priory as the manner is, have reſtored to the ſame. And therefore we command thee,* as above.

And by that Writ appeareth, That the Writ is of the Kings ſpecial grace; for the King might lawfully refuſe the eſtabliſhment of the Prior, becauſe he was not elected according to the Kings Licence and aſſent to the ſame, *&c.* But yet the common uſe is, That if they cannot agree in the Election to ſubmit themſelves unto the award of the Ordinary.

E And there is another form of Writ where the King grants his Royal aſſent to any Chapter to chuſe the Biſhop; and they chuſe one of the Chapter, and becauſe the Archbiſhoprick is void, the Gardian of the Spiritualties doth certifie that Election unto the King, and his Confirmation upon the ſame; and upon that the King grants a Writ of Reſtitution, *&c.* in ſuch form.

The King, &c. Whereas our beloved in Christ, the Prior and Chapter of the Church of Christ of Canterbury, *Keeper of the Spiritualties of the Archbishop of* Canterbury, *the Sea being vacant, the Election lately celebrated in the Church Cathedral, &c. of the discreet man Master* H. *of* H. *Archdeacon and Canon of the same Church, to be Bishop of that place, to which first our Royal assent we gave and favor, have confirmed, as by the Letters Patents of them the Prior and Chapter to us thereupon directed to us appeareth. We that confirmation, &c. as above.*

And before the Statute of *Præmunire*, The King might seise the Temporalities of the Bishop, if he came to the same by Provision of the Pope; But now he shall forfeit all his Lands and Goods by the Statute of the 16 *Rich.* 2. F

And it appeareth by the Register, if a Bishoprick of *Ireland* be void, that they shall sue to the King here in *England*, to go to Election of another, and after the Election made, they ought to have his Royal assent to that Election, upon Certificate of the Election to the King. And thereupon a Writ shall be out of the Chancery here, to the Chief Justice of *Ireland*, or his Lieutenant, rehearsing the whole matter, commanding him to take the Bishops Fealty, and to restore to him the Temporalties; but now the course in *Ireland* is to make such Writs there in the Kings name, but the King doth nominate the Bishops there, and also in *England*; and then the Chapter shall choose him whom the King hath nominated unto them; and thereupon the Writs are made of course. G

But how and in what manner Archbishops and Bishops shall be elected, nominated, presented, invested, and consecrated unto the dignity of an Archbishoprick or Bishoprick. See the Statute thereof made, *Anno* 25 *Hen.* 8. *cap* 2. A

And the King may give power unto another, to give his assent to go unto the Election, and to certifie the same Election unto him again; and thereupon to take the Fealty of the Abbot, Prior, or Bishop, and to certifie the King thereof in the Chancery; and the Writ of *Dedimus Potestatem* shall be such. B

The

The King to his beloved I. *of* C. *his Conſtable of his Caſtle of* B. *Greeting. We compaſſionating the poverty of our beloved in Chriſt, the Subprioreſs and Nuns of the Priory of* B. *vacant by death of* M. *of good memory, late Prioreſs of that place, to whom Licence lately we gave to elect, and willing their labor and expences to ſpare graciouſly, have given you power to give our Royal aſſent in our ſtead, to the election of the future Prioreſs in the ſame Church made, or next to be made; and when ſuch Election by the Letters Patents of them the Subprioreſs and Nuns with the Seal of their Chapter ſigned, to us thereupon directed, ſhall be preſented to you, ſuch aſſent to the Dioceſan of the place to ſignifie, that what concern him farther he may execute, as alſo to receive the Fealty in our name of the ſame Prioreſs, if it happen the election foreſaid Canonically to be confirmed, and you thereof by the Letters Patents of him the Dioceſan to us thereupon directed, ſhall be made to know. And therefore we command you that in the premiſſes you do, in the form foreſaid, and us of the Fealty foreſaid, when that you ſhall have taken, diſtinctly and openly you aſcertain, ſending to us as well the Letters of thoſe the Subprioreſs and Nuns, as the Letters of him the Dioceſan aboveſaid. Witneſs, &c.*

C And if the Dean and Chapter go to the Election of the Biſhop without the Kings aſſent, and certifie the ſame to the King, the King may chuſe whether he will aſſent to the election, or not; and if he will give his Royal aſſent to the ſame, then he ſhall ſend a ſpecial Writ to ſome perſon to take the Fealty of him, and the Writ in the Regiſter is ſuch.

The King to his beloved and truſty I. *his Juſtice of* Ireland. [176] *Greeting. Whereas our beloved in Chriſt, the Dean and Chapter of the Church of* B *their Church foreſaid lately being vacant by the death of* L. *of good memory, late Biſhop of that place, our beloved in Chriſt* I. *Dean of the Church foreſaid, to be their Biſhop and Paſtor have elected, and us by their Letters Patents have ſupplicated, that to the Election the Royal aſſent we would vouchſafe to adhibit: we although, the ſame Dean and Chapter before from us Licence of electing requeſted not, as the manner is, willing not withſtanding to do them this time Grace Special, to the ſame Election have thought fit to adhibit the Royal aſſent, not willing that although they ſuch licence requeſted not they ſhould in any*

wiſe be moleſted or grieved, willing alſo to the ſame Elect that his labor and expences may be ſpared fuller Grace to do; we have given you power, that if it happen ſuch election by the Metropolitan of the place, to be canonically confirmed; and this you by the Letters Patents of the Metropolitan of that place be made to know, then the Fealty of him, the elect to us due, in this part in our name you receive, and the Temporalties of that Biſhopriek as the manner is to be reſtored you cauſe in our ſtead, having firſt received from the Biſhop elect, his Letter made with his Seal, and with the Seal of his Chapter ſigned, that our Grace which to the ſame elect at the preſent of our meer liberality we have done to us, and our heirs, turn not, &c. Witneſs &c.

Licence to go to Election.

THe form of the Kings Licence to go to Electi- D on, is thus.

The King to his beloved in Chriſt, the Prior and Covent of the Monaſtery of Peterborough. *Greeting. Of your part we are humbly ſupplicated, that whereas the Church by the death of* W. *of good memory laſt Abbot of that place, of the ſolace of a Paſtor is deſtitute, Licence we would vouchſafe to grant you, to elect you another to be Abbot, and Paſtor of the ſame Houſe; we to the prayers in this part favorably inclining, that Licence by tenor of theſe preſents have thought fit to grant you, command you that ſuch you elect for Abbot and Paſtor who to God devoted, to the Church foreſaid neceſſary, and to us and our Realm profitable, and faithful may be. Witneſs, &c.*

And

E And when they have made their Election, they ought to ſue a Writ to have the Kings Royal aſſent to that Election, and that aſſent ſhall be made by Writ, directed to the Biſhop of the Dioceſs, and ſhall be ſuch.

The King to the venerable Father in Chriſt P. *by the ſame Grace Biſhop of* Lincoln. *Greeting. Know ye that to the Election lately made in the Covent Church of the Monaſtery of* P. *of the Dioceſs, vacant by the death of* W. *of good memory laſt Abbot of that place of* M. *Subprior of the ſame houſe, or of Frier* B. *Monk of the ſame houſe, to be Abbot of that place, the Royal aſſent and favor we have adhibited. And this to you by Tenor of the preſent we ſignifie, and what there is in this part execute ye.*

F And the Abbot when he is made Abbot, he may ſue Letters Patents, directed to his Tenants, reciting how he is made Abbot, and how the King hath reſtored to him the Temporalties, commanding them that they be attendant upon him as their Lord.

Writ of Decies tantum.

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A THe Writ of *Decies tantum* lieth where any of the Jury who is ſworn, taketh of the one party, or of the other, or of both, to give their Verdict, *&c.* Then he who will may ſue this Writ, for it is an Action popular. And the Writ of *Decies tantum* lieth againſt all the Jurors, although they ſeverally take ſums of money, as ſome more, ſome leſs. And *Decies tantum* lieth againſt an Embraceor if he take money, as well as againſt a Juror, otherwiſe not.

21 *H.*6. 52 5 *E.* 42. Therefore the Releaſe of the party is not good againſt the King.

40 *E.* 3. 33. 44 *E.* 3. 36. 36 *H.* 62. 8. 17 *E.* 4. 5. One Juror may pray his compaſſives to paſs with the one, or the other; becauſe he is perſwaded in conſcience with him.

B And an Embraceor is he who cometh to the Bar with the party, and talketh in the cauſe, or ſtandeth there to ſurvey the Jury, *&c.* or ſo put them in fear; but Lawyers may plead in the cauſe for their fees, but they cannot labor the Jury, and if they take moneys to do ſo, they are Embraceors.

6 *E.* 4. 5. 13 *H.* 4. 16. ac' For Attornies.

C And the *Decies tantum* doth not lie againſt the Embraceor, if he embrace and take no money, for he ought to take money, and alſo embrace, if the action be maintained.

39 *H.* 6. 11. ac. *per Curiam.*

21 H.6.27 2 Ma. Dyer 9. And *Decies tantum* lieth against the Jurors although they do not give a verdict, if they take money; and so if they give a true verdict, a *Decies tantum* hath if they take money.

41 E.3.15. And a *Decies tantum* may be sued against the Jurors and Embraceors, and it may be sued against the Justices of *Nisi prius* by Bill, and it may be adjourned from them in *Banco*. And the form of the Writ is such.

Certain Jurors took money of the party after their Verdict, without any Covenant made before, viz. Each a Mark, and were thereof convict by Verdict, and fined each a Mark; to note that is out of the Statute, and there was no committing to prison. 39 *Ass.* 19. *Br. Decies tantum* 15. 8 H.6.9, 10. Not guilty is no Plea in *Decies tantum*; but he ought to say that he took no money.

6 E.4.5. For in a Writ of Maintenance, he must say, He did not maintain.

The King to his Justices of the Bench. Greeting. Whereas in our Statute at Westminster the Fifth year of our Reign set forth, amongst other things ordained it is, and appointed, That if any Juror in Assise, Jury, or Inquest, take of one party or other, and upon this duly be convinced, that then he be not put in Assise, Juries, nor Inquests; and nevertheless be committed to prison, and further ransomed at our will, and S. and W. lately in a certain Inquest betwixt A. Demandant, and R. Tenant of one Messuage with the appurtenances in N. before us in the Bench aforesaid to be taken put, as well of the aforesaid A. as of the aforesaid R. against the form of the Statute aforesaid took, as we have received, we that Statute inviolably willing to be observed, command you, that calling before you the aforesaid W. and S. if it can be manifest to you that, that they in the aforesaid Inquest were put, and as well of the aforesaid A. as of the aforesaid R. to have taken as aforesaid; then looking upon the Statute for said further thereupon to be done, cause ye, what of right, and according to the form of the Statute aforesaid is to be done. Witness, &c.

And upon this Writ the Justices shall make Proces for the King against the party, which Writ shall be a Pone (as seems) to attach him to appear, and to answer the King for the same; and there is another form of Writ for the party thus.

The King to the Sheriff, &c. If W. shall, &c. then let, &c. I. S. I. F. and W. I. that they be before us from the day of St. Michael, for three weeks wheresoever we shall be in England, to answer as well us as the aforesaid W. H.

Why

Why whereas in the Parliament of the Lord Edward *late King of* England, &c. *at* Weſtminſter *the Thirty eight year of his Reign, he amongſt other things, is agreed, That if any Juries in Aſſiſ. Juries, and other Inqueſts to be taken betwixt us, and any party, or betwixt party and party, ſhall take ought by themſelves or others of the party Plaintiff or Defendant, for giving their Verdict; and thereof by proces in a certain Article of Iurors in the Thirty fourth year of the Reign of the ſame our Grandfather made, Ordain. is convict, whether it be at the ſuit of the party, who for himſelf, or for us, or any other perſon will proſecute, every of the foreſaid Iurors ſhall pay ten times as much as he took, and he that will ſue ſhall have one moyety, and we the other moyety; And that all Embraceors bring or procure ſuch Inqueſts in the Country, for gain or profit to take, ſhall be puniſhed in the ſame manner and form as the Iurors; and if the Iurors or Embraceors ſo convict, have not wherewith in form foreſaid to ſatisfie, he ſhall have impriſonment of one year, as in that Ordinance more fully is contained, the foreſaid* I. S. I. F. *and* W. K. *Iurors in a certain Inqueſt which lately ſum was and taken before the Juſtices of the Lord* Richard, *lately King of* England, *the ſecond after the Conqueſt, of the Bench at* Weſtminſter, *by the Writ of him lately King, of a Record betwixt* R. F. *and the foreſaid* W. H. *of the Beaſts of him* R. *taking, and unjuſtly detained as is ſaid, put. For their verdict in this part to be given, and the foreſaid* W. D. *and* L. I. *Embraceors of the ſame Iurors, * that to bring and procure of the foreſaid* R. *divers ſums of moneys, and other gifts at the City of* Weſt.

* 21 H. 6. 34. Exception was taken for want of the words (*grave damnum*, &c.) and diſallowed, being a popular action.

took in contempt of us, and to the grievous damage of him H. *and against the form of the Ordinance aforesaid, and have there the names of the Pledges, and this Writ.* And Ambidexter is H
that Juror or Embracor, who taketh of one part and the other, to restore ten times as much, *&c.* See 27 *E.*3 3. 33 *E.*3 8. 38 *E.*3. 12.

Writ of Champarty.

THe Writ of Champarty lieth where a man by Cove- I
nant or Agreement made by writing or by word, agreeeth to have parcel of the thing or Land, or debt which is
47 E.39. in suit, that he shall be recorded, if he do recover to maintain and aid him in the Action, and in the matter for which
[172] he sueth. Then he who is grieved shall have this Action against him who maintaineth the suit for the same intent. And the writ is such.

The King to his Justices of the Bench. Greeting. Whereas a- A
mongst other Articles which the Lord Edward, *late King of* England, *&c. for the amendment of the Stat. of the people of his Realm, hath granted, it is ordained, That no minister of his, nor any other part of the thing in the Plea to have, the businesses which are in Plea shall take upon to maintain, nor shall give up his Right to another upon such Covenant, and* L. *the suit of the Plea which is before you by our Writ betwixt* A. *Demandant, and* B. *Tenant of one Messuage, with the appurtenances in* L. *part of the same Messuage to have now, hath taken upon him to maintain the form of the Ordinance aforesaid, as we have received. We that Ordinance willing inviolably to be observed, command you, that looking into the tenor of the Ordinance aforesaid, further thereupon to be done you cause, what of Right, and according to form of the Ordinance aforesaid, is to be done. Witness, &c.*

And upon that the Justices shall award an Attachment B
against the party out of the Common Pleas, *&c.* retornable at a certain day. And this suit shall be said the King's suit, C
but yet the party may sue an Original Writ out of the Chancery against him who purchaseth parcel of the Land depending the Plea, *&c.* And the Statute which giveth the Action, is the Statute of *Articuli super Chartas*, *c.* 11. which willeth, That no minister or other, for part of the things

which

which is in Plea, take upon him any matter which is in ſuit; not none upon any ſuch Covenant ſhall give up his Right, and if any do ſo, and be attainted thereof, there ſhall be forfeit unto the King ſo much of his Lands and Goods of the Taker as doth amount unto the value of the part he hath purchaſed by ſuch taking upon him.

And by thoſe words it ſeemeth, that he who leaſeth his Land, pendant the ſuits, or giveth parcel thereof pendant the plea, to the intent aforeſaid, ſhall be puniſhed as well as he who is the Purchaſor. 20 Aſſ. 5. Br. Champarty 7.

D 30 *E.* 3. *Lib. Aſſ.* It is no Plea, to ſay he did not purchaſe pendant the Plea; by which it ſeemeth, if he purchaſe before the Writ ſued to maintain, *&c.* that he ſhall be puniſhed, *&c.* by the Statute, *Tamen Quære.* For 19 *R.* it is holden by all the Court, That if a man bargain any Lands by Deed, and afterward an Action is brought for the ſame Land, and afterwards pendant the Plea, he maketh eſtate to him to whom he made the bargain, that it is not Champarty. Br. Champarty 7. Fitz 11. Fitz Champarty 15. 9 H. 7. 18. ac' Plow. Com. 465. ac'

E A Surrender made by him in the Reverſion pendant the Plea, is not Champarty. 17 E. 2. Champarty 14.

F And if a man purchaſe Land *Bona fide* pendant the Writ, and not to maintain, it is not Champarty. 50 Aſſ. 2 Br. Champarty 8.

G And a Diſſeiſor in an Aſſiſe ſhall have a Writ of Champarty, if the Diſſeiſee grant part of the Land by Covenant to maintain, *&c.* 22 E. 3. Br. Champarty 4.

H And a man may give to his Son in Frank-marriage or for l ſe, and it ſhall not be ſaid Champarty, for the Statute in the end thereof, is in ſuch manner. But that is not to be intended, That a man may not give Counſel Fees for their pleading. 47 E. 3. 6 E. 2 Fitz C

I And in a Writ of Champarty, 17 *E.* 2. where the Writ did abate for falſe Latine; the Defendant was put to anſwer the Kings ſuit for the ſame matter.

K And if a man grant a Rent out of the Land, pendant the ſuit for the Land, the ſame is Champarty, although that that Rent is not as a demand, *&c.*

L And Champarty lieth as well upon Covenant made by word, *&c.* as if it were made in writing, to have parcel of the thing, *&c.*

M And if the Covenant be to have a Rent out of the Land

Land of another which is not in ſuit, it is not Champarty; but if he do maintain, *&c.* he ſhall have a Writ of Maintenance againſt him for the ſame, but not a Writ of Champarty.

And if the Officers of any Court do maintain any Plea N pleaded in their Court to have part of the ſame or other profit by the Recovery in that Action, the party grieved ſhall have ſuch Writ.

The King to the Sheriff, &c. If A. and M. his wife ſhall, &c. then put, &c. I. *and* W. *Bailiff of our City of* Winchester, W. *and* W. *that they be before our Juſtices, &c. to ſhew, why whereas of the Common Councel of our Realm, it is provided, That no miniſter of ours, nor any other ſhall maintain Pleas, Plaints, nor buſineſſes, which are in our Courts, or elſe whereof Lands and Tenements, or other things whatſoever for part of the thing demanded, or other profit, by Covenant made thereupon to be had, nor ſhall any his right upon ſuch Covenant give up to another, the foreſaid* I. *and* W. *and* W. *and* W. *a certain Plea of Freſh-force, which is before the Major and ſaid Bailiff of the City foreſaid, betwixt* A. *and his wife Demandant, and the foreſaid* R. *and* M. *Tenants of Meſſuage, with the appurtenances in the City foreſaid, for part of the Tenements foreſaid, and other profit thence to have by Covenant have now taken upon them the foreſaid* S. *and* A. *to maintain, and they maintain to the grievous damage of them* R. *and* M. *and againſt the form of the Statute foreſaid, and have, &c.*

Writ upon the Statute, That none be Victualler for the time that he is Major or Sheriff, or Head Officer of a Town or Borough.

NOte, That by the Statute of *York*, that no Victualler O ſhall uſe the occupation, to ſell Victual or Wine in Groſs or by Retail, ſo long as he is in Office in any Town, Borough or City, to keep the Aſſiſe of Bread and Wine upon forfeiture, *&c.* If a man who is a Victualler be choſen to be Major, Sheriff, or other Officer, of a Town,
[173] Borough or City, who by reaſon of his Office is to keep the

the Aſſiſe: By the Statute of 3 *H.*8. 8. it is ordained that two diſcreet perſons of the ſame Town, *&c.* who are not Victuallers be choſen and ſworn to Aſſeſs, the Aſſiſe of Bread, Wine, and Victual, during the time that he is in his Office, and then after the price aſſeſſed of Wine and Victual, for the time it ſhall be lawful for him who is choſen Major or Sheriff, to ſell Wine and Victual for the time
A that he is Officer. But that Statute doth not extend to *London*, *York*, or *Coventry*, to ſell or retail Wine or Victual, but in groſs they may. And by the Statute of 6 *Rich.*2. 9. that Victuallers be not choſen to the office of a Judge in Towns or Cities, but for want of others, then he ſhall not ſell Victuals upon a pain of forfeiture

But it appeareth by the Statute of 3 *H.*8. what things he may do.

B And if any man in *London*, *York*, or *Coventry*, or other place offend againſt thoſe Statutes, then he who is grieved may ſue a Writ directed to the Juſtices of Aſſiſe, commanding them to ſend for the parties, and to do right, *&c.* Or the party grieved may have an Attachment againſt the Officer, Major, Sheriff, or Bailiff, who offend contrary to the Statute, to appear before the Juſtices in the Kings Bench, or before the King in the Common Pleas, to anſwer the matter. And the form of the Writ unto the Juſtices of Aſſiſe is ſuch.

The King to his beloved and truſty A. *and* B. *his Juſtices, the Aſſiſes in ſuch County to take aſſign. Greeting. Whereas for the Common profit of the people of our Realm, it is appointed, that no Miniſter in Cities, nor in Boroughs, who by reaſon of his Office, ought to keep the Aſſiſes of Wine or Victuals, while he is intending ſuch office, ſhall Merchandiſe, Wines, or Victuals, ingroſs or retail. And now* R. *of* B. *hath given us to underſtand that* S. *and* M. *Bailiffs of the Town foreſaid, and certain other Bailiffs in the ſaid Town being, who by reaſon of their office, ſuch Aſſiſe ought to keep in the ſame Town, Wines and Victuals in groſs, and by retail ſell againſt the form of the Statute foreſaid. We if ſo it be willing in this part remedy to apply, command you that hearing the plaint of the foreſaid* R. *and calling the parties before you, and hearing ſeverally their Reaſons thereupon, and looking into the tenor of the*

Statute

Statute foreſaid to the ſame R. as well as for us as for himſelf, hereupon due juſtice to be done, you cauſe as according to the Statute foreſaid is to be done. Witneſs, &c.

And if the Action be brought upon the Statute of *York*, then he who ſueth the Action ſhall have the third part, and the King ſhall have the reſidue of the Victuals which is forfeited. And alſo the form of the Writ of Attachment is ſuch. D

The King to the Sheriff of York. *Greeting. Put, &c.* P. *of* T. *late y Bailiff of the Town of* Richmond, *that he be before us, &c. to ſhow, Why whereas for the Common profit of our Realm of* England; *of the Common Councel of the ſame Realm, it is agreed, That no Miniſter, &c. by Retail under Forfeiture of the ſame, the foreſaid* P. *whiles Bail. of the ſaid Town of* Richmond *he was, wines and diverſe other Victuals, to the value of one Hundred pounds in the foreſaid Town of* Richmond, *as well in groſs as retail Merchandiſed oftentimes, and thoſe there ſold, as is ſaid, to the man feſt contempt of us, and grievous damage of our ſaid people, and againſt the form of the Ordinance foreſaid, and have, &c.*

Writ upon the Statute of Articuli Cleri, that he do not diſtrain in the Glebe of Parſons, nor in the Kings High-way.

THe Writ that no diſtreſs be taken in the Glebe Land E of the Parſon by the Sheriff or other Officer, is grounded upon the Statute of *Articuli Cleri*, cap. 5. By which Statute it appeareth, that the Sheriff nor other Officer ſhall not diſtrain in the Kings High-way, nor in the Glebes of ancient times given to Rectories, and if any Sheriff or other perſon do contrary, then he who is diſtrained may ſue this Writ.

Marlb. c. 55. Ve.17 E. 3. 43. Fitz Reſcous 14. the part may Reſcous.

And if a Lay-perſon be diſtrained in the Kings High- F way, *&c.* he ſhall have an Action upon the Statute of *Marlbridge*. But a Spiritual perſon ſhall have his action upon this Statute; but by the Statute of *Marlbridge* the Kings Officers may diſtrain in the High-way. And after the Writ delivered to the Sheriff, if he be diſtrained again

he

he ſhall have an *Alias* and *Pluries*, and thereupon an attachment. And this writ is in it ſelf a Prohibition to the Sheriff, and the Writ is ſuch.

The King to the Sheriff. Greeting. Whereas in the Articles to the Prelates and Clergy of our Realm by the Lord Edward, *late King of* England, *our Grand-father of the aſſent of the Barons, and great men of our Realm granted is contained, that diſtreſſes ſhall not be made upon Rectors by Sheriff, or other our Miniſters in the Kings High way, or in the Fees with which Churches heretofore were endowed, and now of the grievous plaint of our beloved in Chriſt, the Abbot of* Vale-royal, *Parſon of the Church of* K. *we have underſtood, that thou by colour of thy Office, the Lands and Tenements which are of the endowment and Fee of the ſame Church at* K *lately didſt enter, and the foreſaid Abbot in the Lands and Tenements foreſaid, grievouſly haſt diſtrained; and thereupon to diſtrain deſiſteſt not, to the no ſmall prejudice of him the Abbot, and manifeſt breach of the Liberty Eccleſiaſtick, and againſt the form of the Articles foreſaid: We the Liberty Eccleſiaſtick, willing intire to obſerve, com-* [174] *mand thee that any diſtreſs in the Lands and Tenements which are of the endowment of the Church, by no means thou makeſt, nor ought which may fall out to be to the breach of the Liberty Eccleſiaſtick, or weakening of the Articles foreſaid attempteſt, and the diſtreſs, if any to the Abbot foreſaid in the Fee of his Church foreſaid, as foreſaid is, thou haſt made without delay, that thou releaſe to the ſame. Witneſs, &c.*

A And it ſeemeth, That the party who is diſtrained in the Kings High-way, or the Parſon in the Glebe of his Church ſhall have an Attachment againſt the Sheriff, or other who diſtrained, although they never ſued out before this Writ of Prohibition to the Sheriff; becauſe that the Statute is a Prohibition it ſelf to the Sheriff, *&c.*

B And by the Statute of *Articuli ſuper Chartas*, *cap.* 12. The Sheriff ought not to make exceſſive diſtreſs for the Kings debt, nor diſtrain the Plough-Cattle, if he can finde others. And if the party will finde Sureties to the Sheriff to pay the Kings debt before the day of the retorn of the Writ, the Sheriff ought to deliver back the Cattle. And if the Sheriff do otherwiſe then is expreſſed in the ſaid Statute, the party upon that Statute ſhall have Attachment againſt him; or he may ſue forth a Writ to inhibit the Sheriff, that

that he do not diſtrain contrary to the form of the Statute, and the Writ is ſuch.

The King to the Sheriff of Derby. *Greeting. Whereas amongſt other Articles which the Lord* Edward, *ſometime King of* England, *our Grand-father, for the amendment of the ſtate of his people, hath ordained, It is contained that too grievous diſtreſs ſhall not be taken for our debts; and if the debtor can finde ſufficient Surety for thoſe debts, until a day within the Sheriffs day, that ſuch diſtreſſes ſhall be releaſed. We command thee, that if* I. *of* W. *ſhall finde thee ſufficient ſurety to anſwer us at thy next proffer for one hundred ſhillings, by which fine he made before our Juſtices of the Bench for Licence of Concord of one Writ of* Covenant, *and which of him by ſummons of our Exchequer thou requireſt as is ſaid, then that diſtrain, if any upon him* W. *thou makeſt on the occaſion foreſaid, in the mean time thou ſurceaſe by the Surety aboveſaid, and have there this Writ. Witneſs, &c.*

And there is another form of Writ in ſuch caſe, thus: C

The King to the Sheriff, &c. that too grievous diſtreſs be not taken for our debt, nor too far driven, and if the debtor can finde ſufficient and comepetent Surety for that debt, until a day within the Sheriffs day, within which the debtor may purchaſe himſelf remedy thereupon, or otherwiſe ſatisfie the debt, that ſuch diſtreſs in the mean time be releaſed. We command thee, that if I. *of* T. *whom for eight ſhillings to us, to be paid of his iſſues before us, and elſwhere before our Juſtices forfeited, by vertue of the ſummons of our Exchequer to thee directed, to diſtrain as is ſaid, ſhall finde thee ſufficient Surety, according to the form of the Articles foreſaid for the debt foreſaid, until a day within thy day, at which thou art bound to account therefore, then that diſtrain if any to the ſame* I. *by occaſion of the premiſſes to be made thou haſt cauſed; in the mean time releaſe to the ſame for the Surety foreſaid. Witneſs, &c.*

Writ for to ſeiſe the Land of the Wife, which ſhe holdeth in Dower, who marrieth her ſelf without Licence.

C NOte, That if the Tenant holdeth of the King *in Capite* and dieth, *&c.* his Wife ought not to marry her ſelf again without the Licence of the King; and if ſhe doth, then the King may ſeiſe thoſe Lands which ſhe holdeth in Dower, until ſhe have paid a Fine to the King, which is commonly one years value of the Land which ſhe holdeth in Dower; and that is by the Statute of *Prærog. Regis, cap.* 3. But it appears by the Regiſter, that the King ought to ſeiſe as well the Land of the Husband, as the Land of the Wife which ſhe holdeth in Dower. See after. 263, 264, 265. Stamford 19. it is not Law.

And by the ſame reaſon, If the wife have other Lands of her own Inheritance, beſides the Land which ſhe holdeth in Dower; that the King may ſeiſe that Land alſo; and the Writ in the Regiſter for to ſeiſe the Land, is ſuch.

The King to his Eſcheator. Becauſe Margaret *which was the wife of* Edmund, *Baron* Stafford, *deceaſed, who of us held in chief her ſelf without our Licence, or of our beloved and truſty* Ralph Baſſet, *to whom that which to us belongeth of the marriage foreſaid, we have granted to* Thomas *of* P. *hath married, as from the plaint of him* Ralph *we have received. We command you that if ſo it be, then all the Lands and Tenements as well of him* Thomas, *as of the foreſaid* M. *in the Bailiwick, without delay thou take into our hand, and thoſe ſafely to be kept thou cauſeſt, until otherwiſe thou ſhalt be commanded thereupon from us. Witneſs, &c.*

D And it appeareth by that Writ, that the King may grant the marriage of his Widows, as well as of his Wards; and that the Woman may agree with him to whom the marriage is granted, and by his Aſſent or Licence, if ſhe marry; it ſeemeth ſhe ſhall not pay a Fine. And if ſhe marrieth without Licence, then he who marrieth her, doth the King or his Grantee wrong, and that wrong ſeemeth to be But now by the Statute of 32 H. 8. c. the Compoſition given to the Maſter of the Wards

with three of the Councel of that Court; ſo they may tax a reaſonable Fine at their diſcretion, according to the Statute of *Prærogativa Regis*, *Stamford* Acc.

the

[175] the cauſe, that the King ſhall ſeiſe the Land of him who marrieth the Kings Widow without Licence.

And it appeareth by the Regiſter, that the ſaid *Thomas P.* may agree with the ſaid *Ralph Baſſet*, for which the King ſhall receive his ſeiſure, as appeareth, *Rottulo clerum*, 8 *E.* 2. But yet I conceive, that the King ought not to ſeiſe, but onely the Lands which the woman holdeth in Dower, becauſe the Statute giveth no more, but that he ſhall ſeiſe that which ſhe holdeth in Dower; for if ſhe will not claim, nor ſue for Dower, it ſeemeth ſhe ſhall not be fined, nor none of her Land ſeiſed: And alſo I conceive, That the King cannot grant the Marriage of his Widows, as he may do of his Wards; for if ſhe will live ſingle and not marry, ſhe may ſo do, and ſhall not pay any fine. *Idem Quære.*

If ſhe get Dower at the hands of the heir, or of the Committee without Oath.

Quære, whether ſhe may marry without Licence. *Stamford* 19. No, becauſe preſently upon the Aſſignment ſhe is Tenant to the King, and not to the Heir. *Stamford Prerog.* 18. 40 *Aſſ.* 36. The Kings Widow had Dower without Aſſignment. Ve. *Stamford* 18.

Writ upon the Statute de Anno 1 E. 3. 12, 13. *where the Kings Tenant alieneth without Licence.*

NOte, where the Kings Tenant who holdeth of the A King in chief, as of his Crown, alieneth the Land which he ſo holdeth of him for life, or in tail, or in fee, without the Kings Licence, then the King ought for to ſeiſe the Land for a Fine, *&c.* But if a man holdeth of the King as of any Honor, or Caſtle, or Mannor being in his hands, which he hath by diſcent from any Collateral Anceſtor, and the Tenant doth alien as above, his Lands without Licence granted him by the King, then if the Sheriff or Eſcheator will diſtrain or diſturb the poſſeſſion of the Alienee, he ſhall have a Writ upon the Statute of 1 *E.* 3. 13. which ſhall be ſuch.

The King to his Eſcheator beyond Trent, *or to his Eſcheator in the County of S. Greeting. Whereas of the Common Councel of our Realm, it is appointed, That no man by occaſion of purchaſe of Lands or Tenements, which of us, as of Honors, are held in chief, Licence of our Progenitors, ſometime Kings of* England,

England, *our Predeceſſors hereupon not obtained made ſhall be occaſioned. We command you that* R. *the ſon of* J. *of* C. *Chappellane, by occaſion of a purch. which in the time of the Lord* Edward *lately King of* England, *he made of* Robert *of* Saumby *Knight, of one Oxgange of Land, with the appurtenances in* E. *which of as as of the Honor of* T. *are held in chief as is ſaid, if of us ſo they be held, ye diſturb not againſt the form of the Statute foreſaid. witneſs, &c.*

And upon that he ſhall ſue an *Alias*, and *Pluries*, *vel cauſam nobis ſignifices, &c.* And thereupon an Attachment againſt the Eſcheator or Sheriffe if they diſtrain or diſturb him after that Writ directed unto them, if the Lands be holden as above is ſaid. But it appeareth by that Writ, That a man may hold of the King in *Capite*, as of an Honor, but the ſame is againſt the Regiſter in the beginning of the Regiſter; as appeareth by the *Precipe in Capite*: But the uſe at this day is to take a Fine of him who holdeth of the King of any Honor which is the Ancient Inheritance of the King, who alieneth his Land without Licence; But *Quare* what in Right ought to be done in that Caſe.

Writ quod Clerici non Eligantur in Officio Ballivi, &c. pro terris ſuis.

IF a man who holdeth certain Lands or Tenements by reaſon of his ſaid Lands ought to be choſen Baily, or Bedle, or Reeve, or in ſuch like Office for his Lands; If ſuch a man be made a Clerk, or is within holy Orders, Then he ought not to be choſen into ſuch Office for his Lands, And if he be elected to ſuch Office of Baily or Bedle, &c. he ſhall have a Writ to diſcharge him, which ſhall be ſuch.

The K. *to the Bayliffe of* J. *of* L. *greeting, Whereas according to Law and Cuſtome of our Realm of* England *Clerks in holy Orders being to the Office of Baily or Bedle ought not to be elected, nor hitherto have been accuſtomed, and now of the part of* T. *of* M. *Maſter of our Hoſpital of* C. *Chappellane we have received, that you him the Maſter to the Office of Baily or Bedle of the Mannor foreſaid have elected now of late, and him*

him that Office to take upon him endeavour to compell, to the grievous damage of him the Maſter, and againſt the Law, and Cuſtome foreſaid, whereupon us he hath ſupplicated, for a remedy by us to be provided him; and becauſe it is not conſonant to Law, that the ſaid Maſter who us in the Hoſpital foreſaid for our ſaje eſtate, and for the ſouls of our progenitours ſometime Kings of England, *and for the eſtate of the ſame Hoſpital, and Maſſes, Almes, and other pious works in the ſame Hoſpital maintain and ſuſtain, continueth, ſerveth, to deſiſt elſewhere without the ſame Hoſpital in ſecular buſineſſes be compelled. We command you that the diſtreſs and compulſion if any upon the ſame Maſter, the Office of Baily or Bedel foreſaid, to take upon him you have made, altogether you ſurceaſe, and thoſe without delay ye releaſe, and the moneys if any by amercements or in other manner for the cauſe foreſaid from him you have levied, to the ſame Maſter to be reſtored, you cauſe without delay under the perill incumbent, witneſs, &c.* And he may have an *Alias*, and a *Pluries*, and *Attachment* upon the ſame.

Writ that Parſons, nor Prebendaries ſhall not be charged for their Goods in their poſſeſſions to Fifteens; which are annexed to their Prebends.

THe VVrit for Prebendaries, or other ſpiritual perſons to be diſcharged for their goods of the Benefice in their poſſeſſions lyeth; VVhere the Sheriffe or Collectors of the Fifteens will diſtrain the Parſons or Prebendaries in their ſpiritual poſſeſſions by their goods, being in their poſſeſſions to be Contributories to the payment of Taxes or Fifteens granted, &c. And if they be diſtreined, they ſhall have ſuch Writ. A

The K. to the Taxers of the Diſme and xv. to us laſt by the Commonalty of our Realm of England, *granted in the County of* Glouc. *greeting. If the part of* W. P. *Prebendary of the Prebend of* B. *in the Church of* S. *it is ſhown us, that whereas you by occaſion of the x. or xv. foreſaid to us by the Laity granted in the proper goods of him* W. *from the Temporals to his Prebend foreſaid annexed iſſuing, which to the Diſme amongſt*

amongſt the Spirituals in all Taxes, to the payment of ſuch diſme are taxed, and of which diſmes have uſed to be given, the foreſaid diſme and fifteen amongſt the Laity to aſſeſſe, tax and levy intend leſs juſtly, to the no ſmall damage and grievance of him W. *and becauſe we will not, that the ſame* W. *of ſuch goods, out of which the diſme he giveth us among the Spirituals, of the foreſaid diſme and fifteen by the Laity granted be charged, we command you that him* W. *in his goods proper which to the diſme amongſt the Spiritualls are taxed, and out of which the diſme he giveth us as is foreſaid by reaſon of the diſme and fifteen foreſaid to us by the Laity granted, you moleſt not, nor grieve in any thing, and the diſtreſs if any upon him on this occaſion you have made, without delay to be releaſed him cauſe ye. Provided that of the Lands and Tenements if any by the foreſaid* W. *or his predeceſſ. to the foreſaid Prebend after the twentieth year of the Lord* Edward *ſometime King of* England *our Grandfather purchaſed were to us of ſuch diſme and fifteen according to the Goods and Chattels in the ſaid Lands and Tenements being, and from the ſame provenient be anſwered, as is juſt. Witneſs, &c.* And upon that he ſhall have an *Alias*, *Pluries*, and *Attachment*.

VVrits directed to make Proclamation, that none caſt Filth or Dung into Ditches, or Rivers, neer Cities or Boroughs; made Anno 12 R. 2. cap. 13.

BIF any one caſt any dung, filth, or Intrayles of Cattel into Ditches, Waters, or other places which are next to any City, Borough, or Town, He who will, may ſue forth a Writ directed unto the Major, or Sheriffe or Bayly of ſuch Town, &c. That they make Proclamation, that none ſo do, and that thoſe that have ſo done, that they cauſe to remove, and carry away the ſame from thence; And this Writ is founded upon the Statute of 12 *R.* 2. cap. 13. and the Writ is ſuch.

The K. to his Baily of the Town of New-Caſtle *upon Tine greeting, Whereas in the Statute in our Parliament at*

Canterbury *the twelfth year of our Reign held, ſet forth amongſt other things is contained, That Proclamation ſhall be made as well within the City of* London, *as in other Cities, Boroughs, Townes, and their Suburbs where it ſhall be neceſſary, as well within the Liberties as without, that all they who Dung, Garbage, Intrayles, and other filth have caſt or put into Ditches, Rivers, Waters and other places, within, about, and nigh to divers Cities, Boroughs, and Townes, of our Realm of* England, *and the Suburbs of the ſame, thoſe ſhall totally remove, and carry away before the Feaſt, &c. under the pain of twenty l. to us to be paid, and that the Mayors, and Bayliffes of every City, Borough, and Town, and alſo the Baylies of Liberties, ſhall compell them to do this, under like pain. And moreover, That Proclamation ſhall be made as well in the City of* London, *as is in other Cities, Boroughs, Townes, and other places above named, that no man of what condition ſoever, ſuch like annoyances, Garbage, Dung, Intrailes, and Filth, into Ditches, Rivers, Waters, and places foreſaid thence forth ſhould caſt, or put, and if any ſhall doe this, he ſhall be called before the Chancellor by Writ, at his ſuit who will complain thereupon; and if he be found guilty thereof, he ſhall be puniſhed at the diſcretion of the Chancellour, as in the Statute foreſaid more fully is contained, Therefore of the part of our beloved in Chriſt the Prior and Friers of the order of the* Heremites *of St.* Auguſtine *of the ſaid Town of* New-Caſtle *upon* Tine *we have underſtood, that many men of the ſame Town, Dung, Garbage, Intrayles, and other filth in a certain way, which leadeth near to the Manſion of the foreſaid Prior, and Friers in the ſame Town have caſt and put, to the annoyance of him the Prior and Friers, and others converſant, and paſſing there, and manifeſt perill of the Town, and againſt the form of the Statute foreſaid, we willing that Statute inviolably to be obſerved, command you ſtrictly injoyning that in the Town foreſaid to be proclaimed thou cauſe, that no man of what condition ſoever he ſhall be, any annoyances, Garbage, Dung, Intrails or filth whatſoever in the way foreſaid ſhall caſt or put, and that all and every who ſuch annoyances there ſhall have caſt, or put, thoſe without delay remove, and carry away, according to form of the Statute foreſaid. Witneſs, &c.*

And

And it seemeth, That the Chancellour may award a *Pone* against him, or an Attachment to make him come before him in the Chancery; and there punish him according to his discretion. And it seemeth that he who is grieved by that *Nusans*, may have an Action upon the Statute against him who did the *Nusans*, and recover damages for the Nusance done to him, *tamen Quære*.

But by the Common Law, If a man doth any thing to the annoyance of my Free-hold, or of my Land in which I have an estate of years, I shall have my Action upon the Case for the same, or a Writ of *Nusance* if it be an annoyance unto my Free-hold.

Writ of Assise of Novel Disseisin.

A The Writ of *Assise of Novel Disseisin* lyeth, Where Tenant for life, or Tenant in Fee-simple, or in Tayl is disseised of his Land or Tenements, or put out thereof against his will, that is a Disseisin; and he shall have an Assise of *Novel Disseisin* of that ouster, &c.

B And the Rule in the Register is, That if a man will bring an Assise of *Novel Disseisin* of Lands in the County where the Common Pleas is; That then the Assise shall be brought in the Common Pleas; and if the Common Pleas be in one County, and the Kings Bench in another County, if the *Assise* shall be brought of Lands in the County where the Kings Bench is, Then the *Assise* shall be brought and retorneable in the Kings Bench: and if both the Benches be in one County, the usage is to bring the *Assise* in the Common Pleas, or Kings Bench at pleasure; but that as I think is against the Rule of the Register.

C And the *Assise* of *Mordaunceſtor* shall be brought in the like manner, as the *Assise of Novel Disseisin* shall be before the Justices of the Common Pleas, or Kings Bench; and in the *Assise* a day certain shall be put thus; *till thursday after the Quindene*, &c. But in an *Assise* of *Mortdaunceſtor*, the common day shall be, *in Quindena*, &c. *vel in Octabis* &c. as in other pleas. See before 109. acc. in Attaint Ve. 7. Ass. 7. Assise 180.

And in an Assise of *Novel Disseisin* in the Common Pleas, or in the Kings Beneh, the Justices may give day [out of

Term, thus, *till Thursday after the Feast of St. Lucy*, &c. because that the Assise have not any day of Retorn in the Term, but day certain which the Justices will give, and that may be as well out of Term as in Term. And by the Statute of *Articuli super Chartas*, in every Writ of Summons and Attachment there ought to be 15 dayes betwixt the date and the retorn thereof; but in Assise of *Novel Disseisin* in the Common Pleas, or in the Kings Bench, there needeth not be fifteen dayes between the date and retorn thereof, as it seemeth by the Statute.

30 Ass. 44. Br. Assise 316. for their Patent ought to be dated fifteen dayes before the day.

And in Assise of *Novel Disseisin* sued before Justices in Eyre, or before Justices of the Kings Bench, or Common Pleas, the Plaintiffe ought not to have any Patent to the Justices, for they have authority without a Patent; And so have Justices of Assise authority to take Assises of *Novel Disseisin* without any Patent made unto them by the Statute of *West.* 2. cap. 13. but then the form of the writ is such.

39 Ass. 40. B. Assise 390.

The K. to the Sheriffe, &c. A. *hath complained to us that* B. *injustly and without Judgement hath disseised him of his, franktenement in* C. *after the first passage of the Lord* H. *King, Son of King* J. *into* Gascoign, *and therefore we command thee, that if the foresaid* A. *shall secure thee his clamour to prosecute, then that thou cause that Tenement to be reseised of the Chattels which in it taken were, and that Tenement with the Chattels to be in peace untill the first Assise when our Justices into those parts shall come, and in the mean time cause twelve free and legal men of that venew to view that Tenement, and their names to be imbreviated, and summon them by good summons that they be before our foresaid Justices at the foresaid Assise, ready thereof to make recognisance, and put by sureties and pledges the foresaid* B. *or his Baily if he be not found, that then he be there to hear that recogn', &c. and have there the summons, names of the pledges and this Writ. Witness, &c.*

Which proves, that the Baily *quodam modo.*

And if the Writ of Assise be brought before other Justices then before the Justices of Assise in the same County. Then the Writ shall be in another form, which is such.

V. 7. Ass. 22. Br. Assise 122

This

H *The K. to the Sheriffe, &c.* A. *and* B. *his Wife have complained to us that* C. *unjustly, &c hath disseised them or the foresaid* B. *of his franktenement in* N. *and therefore we command thee, that if the foresaid* A, *and* B. *shall, &c. in peace untill a certain day which our beloved and faithfull* R. *and* F. *shall make you known, and in the mean time, &c. and summon, &c. that then they be before the foresaid* R. *and* F. *and those whom we shall to them associate, at a certain place which the same* R. *and* F. *shall make you know ready thereof to make recogn. and put, &c.*

I And upon that Writ they ought to have a special Patent directed to the same Justices, because they are not the Justices of Assise of that County, and the Parent shall be such

The K. to his beloved and trusty R. *and* F. *greeting, Know ye that we have appointed you our Justices, together with those whom to you we have associated the Assise of* Novel Disseisin *to take, which* A. *and* B. *his Wife have arraigned before you by our Writ against* C. *of the Tenements in* N. *and therefore we command you, that at a certain day, and place which to this you shall appoint that Assise ye take, to do thereupon what to Justice belongeth according to Law and Custom of our Realm, saving to us the amercements thence provenient. For we command our Sheriffe of Linc. that at a certain day and place when ye shall make him know, that Assise before you ye cause to come, In testimony of which these our Letters we have caused to be made patent. Witness, &c.*

A And if the Writ aforesaid be directed to the Sheriffe, and those who are assigned by the Writ to be Justices of that Assise, be the Justices of Assise in the same County, then it seemeth the party needeth not to have a special Patent to them for that Assise, For their general Patent to them to take all Assises, shall be sufficient for that Assise and all other Assises; for the Justices of Assise use but to make one general precept for all Assises according to their general Commission and Patent; and not to make a special precept for every special writ directed to the Sheriffe and especial Patent made unto them to take any special Assise for such party.

And if an Assise be brought in the Common Pleas, or

Kings Bench, there the form of the Writ is.

Plained hath to us A. *that* B. *unjustly, &c. to there-in peace untill the Saturday, in the Octaves of St. Mich. next to come: Or thus; untill the Saturday next after the morrow of all souls next to come; and in the mean time, &c. and summe, &c. that, &c. before us at Westminster or before our Justices at Westminster ready thereupon, &c.*

And in Assise when he purchaseth the Writ, he ought to find sureties in the Chancery, and then the form of the Writ is such. C

The K. &c. Plained hath to us A. *that* B. *injustly, &c. disseised him of his franktenement in* N. *after the first passage of the Lord* H. *King. Son of King* I. *into Gascoign, and because the foresaid* A. *hath secured us his clamour to prosecute by* C. *and* D. *in thy County, we command thee that that Tenement thou cause to be reseised, &c. as above.*

And another form of the Writ against a body corporate, thus.

Plained hath to us A. *that* B. *Major of the City of* C. *and the Common of the same City injustly, &c. Or thus: plained hath to us* A. *that* I. *Abbot of blessed Mary of York, and Frier of* P. *of* C. *Common of the same Abbot, and Frier* I. *of* P. *convert of the same house injustly, &c. Or thus: Plained hath to us* A. *Chaplain of the Chantery in the Church of* N. *that* B. *injustly, &c.*

If a man have a Rent-service, or a Rent-charge, or Rent-seck, issuing of Land for life, in Tail or in Fee, if he be disseised of the Rent, he shall have an Assise, and the Writ shall be generall; *quod injuste, &c. disseizit cum de libero tenemento suo in* N and shall make his title to the Rent.

And the Rule in the Register is, That when a man is disseised of a Rent-charge, or of a Rent-seck, it behoveth that all the Tenants of the Tenements charged, be named in the Writ of Assise, and all the Land put in view, although he were disseised but by one Tenant only, but it is otherwise of a Rent-service.

And in an Assise of *Novell Disseisin* a man shall not vouch any one, unless he be named in the Writ, and present when he is vouched, and would presently enter into the warranty, and warrant the Land, &c. E

But

F But in an Assise of Mortdaunceſtour, he may voueh at large. And a man ſhall have an Aſſiſe of *Novel Diſſeiſin* of an Office if he have the ſame for life; and the Writ ſhall be, *That he diſſeiſed him of his franktenement* in D. and he ſhall make his plaint of the Office, and ſhew his title in the plaint.

And ſo if a man have any profit granted unto him out of Land for life, or in Fee, as to have the fruits of Apples, Nuts, Acorns, or other profit whatſoever, he ſhall have an Aſſiſe of them if he be diſſeiſed of them, as appeareth by the Statute of Weſtminſter 2. cap. 25. 6 Aſſ. 12. Br. Aſſiſe 145.

G And ſo of Toll, Tronage, Paſſage, Pontage, Pannage, and other like. And if Tenant by Statute Merchant, or by Statute-ſtaple be diſſeiſed of any Lands, which they have in Execution untill their debts be levied, they ſhall have an Aſſiſe of *Novell Diſſeiſin* and recover their Term; and yet they ſhal have but a Chattel, *ſc.* the Land for a certain tearm of years, but that is by reaſon of Statutes thereof made. And ſo he ſhall have an Aſſiſe, &c. of the Land which he hath in Execution by *Elegit*, if he be deforced thereof by the Statute of Weſtminſter 2 cap. 18.

H And by the Statute of Weſtminſter 2. cap. 25: Aſſiſe is given if one with his Cattell do eat the ſeverall paſture of another, the other may have an Aſſiſe of the paſture and weyve the poſſeſſion, although the other do not claim the freehold of the Land.

I And ſo if the Lord, or other man, who hath a Rent iſſuing out of the Lands, do often diſtrain for the Rent, or ſervice where none is behind, the Tenant may have an Aſſiſe for this diſtreſs by the common Law. And that Aſſiſe lyeth between the Lord and the Tenant, or between the Lord paramount, and the Tenant paravail, as appeareth. 27 *Aſſiſe* 51. But it ſeemeth reaſonable, that the Tenant have the Aſſiſe of *Sovient Foſts* diſtrained againſt him, who claimeth a Rent-charge out of Land, *tamen quære*. And if a man ſueth divers Aſſiſes againſt one man in ſeveral Towns, or againſt ſeveral men in ſeverall Towns, he may ſue forth a patent to the Juſtices for all thoſe Aſſiſes, and the form of the Patent ſhall be ſuch. 27 Aſſiſe 51. Br. Aſſiſe. 274 28 Aſſ. 30. 6. Br. Aſſiſe 291.

The K. to his beloved, &c. greeting. Know that we have conſtituted you the Aſſiſe of Novel diſſeiſin, &c. which, &c.

of

if the Tenements in N. and the Assise of Novel disseis. to take with the same A. before you by another, our Writ against, &c. of the Tenements, and so if there were more.

It a man be seised of parcel of a Rent which is payable at a day, and afterwards the Tenant will not pay the residue of the same Rent which is due at the same day, he who ought to have the Rent shall have an Assise of *Novel Disseisin* of the whole Rent as well of that which he is seised of as of the residue, and that Seisin of parcel of the Rent shall be to him a Seisin of the whole Rent. And if a man do distrein for his Rent pendant an Assise for the same Rent, he shall abate his Assise, but if he distrein for Homage pendant the Assise for the Rent which is parcel of that service, shall not abate the Assise for an Assise doth not lye of Homage.

29. Ass. 22. Br. Assise 302. Fits 288.

Quere if for sevent distress 28. Ass. 50. Br. Assise 292.

And Seisin of Rent by an Abbot shall be a sufficient Seisin for the Successor to have Assise of the Rent if he be denyed the same, or rescous made against him, but Seisin of Rent of the Father shall not be sufficient Seisin to the Son, to have an Assise of the Rent if rescous be made unto him of the Rent; because that the Abbot hath the Rent in the Right of his house, which house continueth, and so the Seisin of the predecessour is the Seisin of the Successour, but the Father hath the Rent in his own Right; and the Son shall have the same in his own Right, and then he ought to have a new Seisin. And a man may have one Assise of several Rents, or of Land and Rent, and Offices and profits apprender in his soil, and all in one Writ. And the Lord Paramount may have common appendant in the Lands of the Tenant paravaile to his Lands which he hath by purchase, &c. And the Tenant paravaile may improve against the Lord Paramount, as well as he may against other Commoner or Neighbour, if he leave him sufficient Common. *quod vide* M. 19. E 3. 1. Assise in the abridgment.

7 Ass. 18. Br. Ass. 127. 21 Ass. 13. ibid 168. 28. Ass. 4. ac. *per Curiam.* 15 H. 7. 10. If there be sufficient at the time of the improvement, although not after it is not material Ass. 18.

And the Seisin of the Gardian, shall give Seisin to the Ward to have an Assise if he be disseised. And so of Tenant by Statute Merchant. And seisin by the hands of Tenant for life of Lands out of which a Rent is issuing is a sufficient Seisin to have an Assise of the Rent, if it be afterwards denyed.

A B C D E F

And

And so it seemeth payment of the Rent by the Tenant for years of the Land is a sufficient Seisin to have an Assise of the Rent if so it be afterwards denyed, *Tamen Quære.* 8 H. 16. 17. 8 Ass. 16. Assise. 194.

G A Feme Covert shall not be a Disseisres of any Land if she do not actually enter, nor shall she be a Disseisres by the Husbands Act. And Enfant shall not be a Disseisor by his commandment. But a man of full age may be Disseisor if he command another to enter into Land.

If a man recover a Rent, the Sheriffe may put him in Seisin by Wood, or by any parcel of the Land out of which the Rent is issuing.

H And Seisin of Rent by a Parson, or a Chauntry Priest which they have in the Right of their Church, shall be a Seisin to their Successors to have an Assise of the Rent, if they be denyed the same after the death of their predecessors as well as of an Abbot, *quod vc*, 34. E. 3. Lib. ass.

I A man shall not be adjudged a Disseisor by the Act of his Tenant at will, although the Tenant at will do rescous for Rent, &c. he shall be adjudged the soile Disseisor and not the Tenant of the Freehold; But if the Tenant of the Land pay the Rent unto a stranger who ought not to have the same, that payment hath a Desseisin to him who ought to have the Rent.

Writ

Writ of Common of Paſture, Turbarie or Piſcarie.

THe Writ of Aſſiſe of *Novel Diſſeiſin*, of Common of paſture, or of Turbary, or of Piſcary, lyeth where a man hath Common of paſture appendant or appurtenant to his Mannor or houſe, or Land which he hath for term of Life, or in Fee-ſimple, or in Fee-Tayl, if he be diſturbed of his Common, ſo that he cannot take it as he ought to do, he ſhall have an Aſſiſe of *Novel Diſſeiſin* thereof, and the Writ ſhall be ſuch. L

The King to the Sheriffe, &c. Plained hath to us A. *that* B. *injuſtly hath diſſeiſed him of the Common of his paſture in* N. *which belongeth to his franck-tenement in the ſame Town, or in another Town, after the firſt paſſage, &c. as in Aſſiſe of Land; and therefore we command thee that if the foreſaid* A. *ſhall ſecure thee, &c. then thou cauſe twelve free and Legal men of the ſame venew to view that paſture, and Tenement and their names to be imbreviated, and ſum, &c. before the Juſtice, &c. or before us, thurſday next after the morrow of the Octave, &c. Or thus, before our Juſtices at the firſt Aſſiſe, when into thoſe parts they ſhall come. Or thus, before our beloved, and truſty* R. *and* F. *and others which, &c. as above.*

11 H. 6. 32. The Writ was *de libero tenemento*, and his plaint of Comon of paſture, for which the Writ abated.

And if the Common of paſture, or Turbary, or Piſcary be not appendant nor appurtenant, to any Mannor nor Land nor Tenement, then thoſe words in the Writ *which belongeth to his frank-tenement* ſhall be left out in the Writ, and then the Writ ſhall be ſuch.

The K. &c. plained hath to us A. *that* B, *injuſtly, &c. diſſeiſed him of the Common of his paſture in* N. *after the firſt paſſage unto of that venew to view that paſture, and their names to be imbreviated, &c.* as in the Writ of Aſſiſe of Land. And the Patent made unto the Juſtices of the Aſſiſe of Common, is as the patent made to the Juſtices of Aſſiſe of Land, but where it is ſaid in the patent of Aſſiſe of Land that place; *de libro tenemento ſuo, &c.* he ſhall ſay in this patent in *de Communi paſtura in* N. *&c.*

11 H. 6. 32. per Paſton

And if a man have Common appendant or appurtenant to his Freehold which is his Mannor or Land which is in A

ſeveral

ſeveral Counties, and he is Diſſeiſed of his Common, then he ſhall have an Aſſiſe in the County where the Common is, and another Writ in the County where the Land is, to which the Common is appendant or appurtenant. And if the Land or Common be in one County, and the Land to which the Common is, be in another County, yet the Writ ſhall be brought in the County where the land out of which the Common is iſſuing is, and another Writ in the County where the land to which the Common is appendant is. And if the land be in one County to which the appendant, and the Common be in ſeveral Counties: Then he ſhall have ſeveral Writs in the County where the Common is, and where the Land is, and the forms of the Writ are ſuch.

Plained hath to us A. *that* B. *injuſtly and without judgment hath diſſeiſed him of the Common of his paſture in* N. *which belongeth to his frank-tenement in* R. *and* K *which are in the Confine of thy County, and of the County of* Lincoln *after the firſt paſſage, &c. Or thus, of the Common of his paſture in* N. *in thy County which belong to his frank-tenement in* K. *in the County, &c. Or thus, of the Common of his paſture in* R. *and* K. *which are in the Confine of thy County, and the County of* Lincoln, *which belong to his frank-tenement in* K. *in the foreſaid County of* Lincoln *in the ſame confine, &c.* And upon theſe Writs he may have a Patent directed to certain perſons who ſhall do Juſtice in that Aſſiſe upon all the Writs.

The K. *to his beloved, &c. Know that we have conſtituted you our Juſtic. together with thoſe which we have aſſociated to you the Aſſiſe of Novel diſſeiſin to take, which* A. *hath arraigned before you by our Writs againſt* B. *of Common of paſture in* R. *and* K. *which are in the confine of the County of* N. *and* L. *and therefore you we command that at a certain day and place in the Confine of the County foreſaid, or in the Confine foreſaid which to this you ſhall provide, that Aſſiſe you take, to do, &c. for we Command our Sheriffe foreſaid that at a day and place in the confine of the County foreſaid, or in Confine foreſaid, which you ſhall cauſe him to know that Aſſiſe, &c.*

And in like manner he may ſue ſevaral Writs of Aſſiſe of Common of Turbary, or of Piſcary, or other like profits which are in two Counties. And when

22 H. 6. 9. 10. 7 H. 4. 50. 3. E. 4. 2. ac. 10. Aſſ. 5. Br. Aſſiſe 15. when a man hath a Rent which is iſſuing out of Land in two Counties, if he be diſſeiſed thereof he ſhall have an Aſſiſe as before is ſaid of common, viz. 2. VVrits, one patent as before is ſaid by the Statute of 7. R. 2. Cap. 10.

1. 45. E. 3. 25. 15. E. 4. 32. Ryot. 6. H. 7. 14. 11. H. 12. And a man cannot uſe his Common appendant with the Cattel of ſtrangers, unleſs he bring them to ſoil his Land, But he cannot agiſt other cattel there for money, which do not manure his Land.

15. E. 4. 32. The ſame Law where a man hath Common as an Inhabitant he ſhall have it but for thoſe which are Levant and Couchant within that Town.

A man preſumed to have Common appendant And if a man grant Common unto one for his own cattel, he cannot uſe his Common with the cattel of a ſtranger.

for all manner of Beaſts, and it was holden it could not be Common appendant for that the ſame is not but for thoſe Cattel which manure his Lands 9 E. 4. 3. 37 H. 6. 34. & 14. H. 6. 6. But it is Common appurtenant Old. N. B. ac.

And ſo if a man preſcribe to have Common for his own cattel, he cannot uſe his Common with other cattel.

14 H. 8. 2. If a man hath Common ſans number But if a man claim Common for cattel without number, or to have Common for twenty cattel, there he may agiſt the cattel of Stranger for money in that Common.

granted yet the Tenant ſhal have Common for his Cattel. 11. H. 6. 22.

22 H. 6. 42 37. H. 6. 34. *Admittitur.* But Priſcot, it cannot be And a man may claim Common appendant *ratione Meſſuagii*, but it ſeemeth it ſhall be taken that he hath Land lying to his houſe, &c. which the cattel ought to ſoile, &c. *Quære.* C

but to arrable 20. H. 6. 4. Halls ac. 5. aſſ. 2. it cannot be but to ancient Land of that and not to Land improved 10. E. 2. ac. and there the Land to which it may be appendant is called aid and gain.

7. E. 4. 26. 32. H. 8. Dyer. 47. None ſhall claim Common by Vicinage but that Lord who hath the poſſeſſion of the Town, 23. H. 6. But yet it ſeemeth, that one Neighbour may clam D the

E the common by vicinage in the land of an other Neighbour although he be Lord of the Town, &c. And if a man claim Common in certain Lands so long as he dwelleth in such a Town to such a house; Or if he claim Common in the Land until the Lands be sowed, and after the Corn is cut to have common there again. 37. H. 6. 34. ac.

F And if a man be Desseised of the Common appendant or appurtenant to his Land, and afterwards he maketh a Feoffment of the Land to which the Common is appendant or appurtenant, he shall not have Assise of that Common nor other remedy. 19. H. 6. 73. So if he be disseised of the land he shall no have Common till his entry.

G If a man grant certain Lands to one *Cum Communia in omnibus terræ suis, &c.* and doth not express any place certain, he shall have Common in all his Lands which he had at the time of the grant. 5. H. 7. 7. 26. H. 8. 4.

H And if a man have Common of Estovers by grant he cannot build new houses to have Common of Estovers for those houses. 7. E. 4. 9. 7.

I The user of Common by Tenants at will, shall be a Seisin to him in the Reversion to have an Assise, if he or his Tenant at will be after disturbed to use the Common.

K And P. 45. E. 3. it appeareth that he who hath Common granted unto him by specialty cannot agist other mens cattel in the Common, but ought for to use the Common with his own cattel, or such cattel which he hath to occupy his Land with, &c. or may manure his Lands with Cowes which he alloweth to have the keeping for their Mannor: But *Thoyre* said that if a man grant to me Common for my cattel, that I may take others beasts to give me Seisin in my Common, and presently drive them off again, if he who granteth the Common do agree thereunto, And in Assise of Common, all the Tenants of the Land out of which the Common is, ought to be named, &c. as in assise of a Rent-charge. 24. H. 6. 6. 11. H. 6. 22. H. 6. 7. 7. 32. Ass. 82. Thoyre 7. Ass. Br. Assise 121.

If

If a man have an Aſſiſe of Common, and pendant the Writ, he uſeth the Common, the Writ ſhall abate, but if the Cattel eſcape into the Land, it ſhall not abate the Writ, although they feed there. M

And it is to know, Common appurtenant to a Mannor may be for cattel without number, or to a certain number, and may be appurtenant to a Mannor by preſcription or by grant made ſince time of memory, and thatas wel for Cattel certain, as without number. As if at this day a man granteth to one Common of Eſtovers, or of Turbary in Feeſimple to burn in his Mannor, by that grant it is appurtenant to the Mannor, and if he make a Feoffment of the Mannor, the Common ſhall paſs to the Feoffee. And ſo if he grant to a man and his Heirs Common as appurtenant to his Mannor of F. to Common in ſuch a Moore, &c. now by that grant the Grantee ſhall have the Common appurtenant to his Mannor, and if he make a Feoffment in Fee, or for life of the Mannor, the Feoffee or Leſſee ſhall have the Common. As if an Abbot with the aſſent of his covent grant to another and his Heires to find a Chaplain to ſing in his Chappel in his Mannor of D. if he make a Feoffment of the Mannor, the Feoffee ſhall have an Action of Covenant againſt the Abbot and his ſucceſſors by that grant as it appeareth, M. 2. H. 4. 6. 1. Covenant, and H. 42. B. 3. N

26 H. 8. 4.

Plow. Com. 381. ac. 5. Aſſ. 9.

2 H. 4. 6.
20 H. 7 13.
16 H. 7. 9.
42 E. 3. 3.

Writ.

Writ of Certificate upon Aſsiſe ſued.

A THe Writ of Certificate lyeth in diverſe manners: one is where the Defendant appeareth by bail and pleads to the Aſſiſe where his maſter hath a releaſe to plead, or other matter in writing, of which the Jury cannot have notice, then if the Aſſiſe paſs againſt the Bayliff, the maſter ſhall have a Writ of Certificate upon that writing, and thereupon he ſhall cauſe the Aſſiſe to return and to be ſworn to try that deed, &c. as ſhall be more fully after ſhewed. As a fine or Recovery 8. E. 3. Br. Aſſiſe 426. 7 H. 4. 45.

B And there is another manner of Certificate when the verdict is not well examined by the Juſtices when they take the verdict, or when they have not well examined, or fully enquired of the iſſue joined, *&c.* 21 E. 3. 3. Br. Aſſ. 63. Ve. 32. Aſſ.

And the Certificate ought to be ſued in the ſame County where the Aſſiſe was ſued, and may be ſued before the ſame Juſtices before whom the Aſſiſe paſſed, or before other Juſtices. And if the Kings Bench or Common pleas be in the ſame County where the Aſſiſe paſſed, then the Certificate may be ſued in the Kings Bench or Common Pleas, if they be in the ſame County where the Aſſiſe paſſed. 1. One ſhall have a Certificate upon a defeaſance. 12 H. 4. 10. 41 Aſſ. 5. Certificate was at the Common Law before judgement. Ve. 8. E. 3. Fits Aſſiſe 412. Plow. Com. 92.

And that Certificate ſhall be a Writ directed to the D Sheriff, and the Juſtices ſhall have a Patent made to them as they ſhall have in Aſſiſe, *&c.* and the form of the Patent made to the Juſtices ſhall be ſuch.

The King to his beloved and truſty A. B. *and* C. *greeting, becauſe upon certain Articles concerning the aſſiſe of Novel Diſſeiſin which betwixt* A. *and* B. *ſum. was, and taken before you the aforeſaid* B. *and our beloved and truſty* I. *at* N. *by our writ certain doubts there are, as from the plaint of him* A. *we have received, we have appointed you our Juſtice, with thoſe whom we have aſſociated to you, the Certificate thereupon to take, and therefore you we command that at a certain day and place which for this you ſhall provide, that certificate ye take, to do thereupon what to Juſtice belongs to be done ſaving to us our amercements, &c. For we have commanded our Sheriff, &c. that at a certain day day and place which ye ſhall cauſe him to know, the Jury of that Aſſ. before you he*

cauſe to come to certifie you upon the articles aforeſaid in teſtimony of which thing theſe our letters we have cauſed to be made Patent witneſs. And the form of the Writ of Certificate is ſuch.

The King to the Sheriff, &c. becauſe upon certain articles E *concerning the aſſiſe of Novel diſſeiſin which betwixt* A. *and* B. *ſum. was and taken before our beloved and truſty* H. *and* R. *at* N. *by our writ of the Tenement in* I. *ſome doubts there are, as from the plaint of him* A. *we have received, we have conſtituted the foreſaid* H. *and* R. *Or thus, the foreſaid* K. *and our beloved and truſty* I. *Or thus, our beloved and truſty* N. *and* S. *our Juſtic. together with thoſe whom we ſhall aſſociate, the Certificate thereupon to take, and therefore we command thee, that at a certain day and place which the foreſaid* N. *and* S. *ſhall cauſe thee to know, the Jurie of that Aſſ. thou cauſe to come before them, to certifie them upon the articles foreſaid, and ſum. &c. the foreſaid,* B. *that &c. before &c. that that certificate, and have there the names of the Jur. and this writ.*

And that Writ lyeth properly where the verdict is not well examined. But if he appear by Baily to the Aſſiſe, and plead *Nat tort, &c.* and it is found againſt him where his maſter hath a releaſe to plead, and doth not plead it; then his maſter ſhall have another form of Writ upon the Statute of *weſt.* 2. *cap.* 25. and the writ ſhall be ſuch.

The King to his beloved and truſty I. *and his companions Juſtic. &c. Whereas the Statute ſet forth at* Weſtminſter, *is contained, that if the Defendant againſt whom the Aſſiſe paſſed in his abſence ſhow a deed or releaſe upon the making whereof the Jury were not examined, nor could be examined becauſe no mention was made of them in pleading, and probably the making of ſuch writings might not be known, the Juſtic. upon ſight of thoſe writings ſhall warn the party who recovered that he be at a certain day, and ſhall cauſe the Jury of the ſame aſſiſe to come, and if by verdict of the Jury or perhaps by inrolment that writing be verified, he ſhall be puniſhed who purchaſed the aſſiſe againſt his deed, by a certain pain in the Statute foreſaid contained, and from the plaint of* E. *we have received, that* I. *lately arraigned a certain aſſiſe of Novel diſſ. by our writ againſt the foreſaid* E. *and others, &c. of the tene-*

tenements in S. which aſſ in the abſence of him E. *and the others hath paſſed, as is ſaid, and the ſame* E. *a certain releaſe of the foreſaid* L. *hath of the Tenements aforeſaid, upon ths making whereof the Iurors were not examined, nor cou'd be examined, becauſe no mention thereof was made in the pleading; we command you that having ſeen that writing to the ſame* E. *in the premiſes due, and ſpeedy compliſhment of juſtice to be done, you cauſe according to form of the Statute foreſaid, witneſs, &c.* [182]

And that Writ is as a Patent made to thoſe Iuſtices, and upon that they award a certificate to the Sheriff to warn the party to cauſe the Iurours in the Aſsiſe to come before them. And that Patent or Commiſsion is commonly made to other Iuſtices, as unto the Iuſtices before whom the aſſiſe paſſed, and the ſame appeareth by the words of the Patent, or Commiſsion.

A But by the Statute of *Weſt.* 2. *Cap.* 25. appeareth, That if the Baily of the Defendant do alledge a record in barr of the Aſsiſe, the Iuſtices may take the Aſsiſe notwithſtanding that plea of the Baily and give judgement upon the verdict, &c. But then the Defendant in the Aſsiſe may come to the Iuſtices, and ſhew that he hath matter of Record to barr the Plaintiff in the Aſsiſe, &c. That at another time that he barred the Plaintiff in the like aſſiſe, brought by him againſt the Defendant; Or that there is a Writ of a higher nature depending between them for thoſe lands; and then he ought to ſue forth a VVrit, to cauſe the Record to be brought before the Iuſtices, before whom the Aſsiſe paſſed, and thereupon when the Record commeth before them, if they perceive that the Record ſhall be a barre in the Aſsiſe, then the ſaid Iuſtices ſhall award a ſpecial Writ of *ſcire facias* out of the Record of the Aſsiſe, to warn the party to be before them, &c. and if he cannot deny it, nor avoid it, then the Defendant ſhall recover his ſeiſin again; and double damages, and the Plaintiff in the Aſsiſe ſhall be impriſoned at the diſcretion of the Iuſtices. And if the Defendant in the Aſsiſe have not any Record to ſhew, but a releaſe, or other matter in writing, which might bar the Plaintiff who recovered in the Aſsiſe; then if the Defendant ſhew thoſe writings to the Iuſtices, before whom the Aſsiſe was taken, the Iuſtices

2 H. 5. 5. Fitz. Certificat. 1.

thereupon may award a speciall Writ of certificare directed to the Sheriff that he ſummon in the party, and that he cauſe the Jurours in the firſt *Aſſiſe*, &c. to try that matter, &c. And if it be found for the Defendant, then the Plaintiff who recovered by the *Aſſiſe*, &c. ſhall loſe double damages, and ſhall be alſo impriſoned at the diſcretion of the Juſtices, as appeareth by the ſaid Statute.

But whether the Defendant ſhall ſue a ſpecial Patent B to the ſame Juſtices, to proceed as the Writ aforeſaid is, or that they ſhall proceed and award a ſpecial certificate, upon the matter in writing ſhewed them by the Defendant, hath been a queſtion, becauſe by the judgement in the *Aſſiſe*, and execution awarded, their authority by commiſſion is detained, as ſome ſay. But I conceive that the Statute is a commiſſion and Patent ſufficient, to give authority to them to award a ſpeciall Certificate to warn the party, and to cauſe the Jurors of the *Aſſiſe* to appear before them upon the matter, in writing ſhewed unto them, although Judgment be given in the *Aſſiſe*, and execution be paſt, for if there be ſuch matter, then their authority remaineth to puniſh the Plaintiff for his ſuit, and to reſtore the Defendant again unto his poſſeſſion, by vertue of the Statute as I conceive.

And if a man loſeth in an *Aſſiſe* by default where he C pleaded by Bailly, where he hath matter in writing not ſhewed to the Jurours, he may ſue a Certificare upon that matter before the Juſtices, at the next Aſſiſe following, or before the Juſtice of Aſſiſe, or before the Juſtices of the Kings Bench, or before the Juſtices of Common Pleas, and the forms of the Writs is ſuch.

The King to the Sheriff, &c. becauſe, &c. & above unto we have received, we command thee, that the Jurors of that Aſſiſe thou cauſe to come before our Juſtices at the firſt Aſſiſ. when into thoſe parts they ſhall come, to certifie them upon the articles aforeſaid, and ſumm. &c. the aforeſaid B. *that he be at the aforeſaid Aſſiſes before the foreſaid Juſtices to hear that Certificate; and if* the Certificate be ſued before the Juſtices of the common Pleas, then the Writ is ſuch.

The King to the Sheriff, &c. becauſe, &c. as we have received, we command thee that the Jurours of that Aſſiſ. thou cauſe to come before our Juſtices at Weſtm. ſuch day, to certifie

tifie them, &c. as above is said.

And if the Certificate be sued before the King, then *the writ is as above; we command thee that the Jurours of that Ass. thou cause to come before us at W. on the day, &c. to certifie us, &c.*

D If a man in an Assise brought against him pleadeth a release, or other matter in writing in bar of the Assise, and the Plaintiff doth deny the same, by reason whereof the same doth remain in the keeping of the chief Justice of the Assise; and afterwards a new Commission is made to the chief Iustice, and to other persons, to take all Assises which remain to be taken in that County, for which cause they award a re-attachment against the defr. and a Resummons against the Iurours; the defr. may come and plead the release or writing, which is in the keeping of the chief Iustice, which was denied, &c. And thereupon the chief Iustice shall have day untill the next Assises, to bring in the writing; and if before the next Assises the Kings Bench be removed to that County, and that record of the Assise is come into the same Court, and the defr. is re-attached and appeareth not, but maketh default, for which the Assise passeth for the Plaintiff, &c. and that release not pleaded nor shewed, the Defendant shall have a special writ to the said Iustice, in whose custody the release or writing is, to send the same into the Kings Bench, and thereupon the Defendant shall have his certificate out of the Kings Bench, against the Plaintiff upon that matter, and such Writ is in the Register. [183]

A If a man sue a Certificate, he may have a Writ of Association upon that writ, as in an Assise of *Novel Disseisin*, and also a writ of *Si non omnes*, as well as he shall have in Assise of *Novel Diss.*

B And a man may sue the Certificate before the same Iustices, before whom the Assise passed, and then the Certificate shall issue out of the Rolls of the same Iustices; But he may sue his Certificate before other Iustices if he will, and then the writ and patent shall issue out of the Chancery. 12 H. 5. 10 fo of Attaint.

C And if some of the Jurours be dead, yet it seemeth reasonable that he have the certificate; and that it be tryed by those who are alive, and by others, &c. for that is

a new matter upon which they were not charged before; but ſee that matter debated, H 7.H.4.H 12.H.4. and 32. E.3. lib. Aſſ.

Anno 43 E 3. It appeareth that a man ſhall have a Certificate before Iudgement given in Aſſiſe, as well as after the judgement given. D

And a man ſhall have a Certificate upon an Aſſiſe of Darrein preſentment, or an Aſsiſe of Mordauncestors, or *jure utrum*; and it is reaſon that a man have a certificate upon an attaint, if it paſs againſt him by default, where he hath matter to bar the attaint by releaſe, or other writing, &c. E

And if the Record of Aſſiſe be removed into the Common Pleas, the party may ſue a certificate in the Common Pleas before the Iuſtices there, although the Aſſiſe be taken of lands in another County: See title proceſs H 33. H 6. F

7 H. 4. 45. ac. 13. H 6. 20. 31. nota Cape *pro* fine was awarded pendant the Certificate of Aſſiſe.

And the proceſs in a Certificate is ſummons againſt the Iury, and *venire facias* againſt the party, &c. and after a diſtreſs. G

And *Niſi prius* ſhall be granted in a Certificate, if the land be in another County, then where the Certificate is brought. H

Writ of Aſsiſe of Nuſans.

4 E.3.36. et 5. E.3.43. Fitz nuſans 82.

ASſiſe of *Nuſans* lyeth where a man levieth a *Nuſans* to my freehold, which I have for life, in tail, or in fee-ſimple, then I ſhall have the Writ to redreſs the Nuſans. I

And that the Nuſans is done in one County, and the land to which the Nuſans is done be in another County, then he ought to ſue ſeveral Writs of Aſſiſe of Nuſans, to each Sheriff a Writ, and a Patent made to certain perſons to be Iuſtices in that Aſsiſe, as it ſhall be in Aſsiſe of common, of paſture, or Turbary, or Rent, or the like: And the form of the Writ is ſuch. K

4 Aſſ. 2. If Nuſans be, and after he to whom the Nuſans is, alien the land, the Feoffee ſhall not have aſſiſe, becauſe it was before his intereſt, but the Tenant ſhall anſwer to the Nuſans, as well before his time as after 19. Aſſiſ. 9.

The

L *The King to the Sheriff, &c. A. hath plained to us that B. injuſtly, and without judgement hath made a certain poole in C. in thy County, to the nuſance of his franktenement in L. in the County of H. after the paſſage, &c. and therefore we command thee, that if the foreſaid A. ſhall ſecure thee his clamour to proſecute, then cauſe twelve free and legal men of that venew to ſee that pool, and their names to be imbreviated, &c.*

And in the other writ which ſhall be directed unto the Sheriff where the Land is to which the *Nuſance* is, he ſhall ſay in the Writ, *videre tenementum illud*; So that the Jurours where the Land is, ſhall ſee the land, and the Jurors in the other County ſhall ſee the Pool where the Nuſans is done.

And moreover he ſhall ſay in the VVrit, *and their names to be imbreviated, and ſummon them by good ſummons, that they be before our faithful and truſty B. and F. and thoſe which to them we ſhall aſſociate, at a certain day and place in the confine of the County foreſaid, &c. ready, &c.* And the form of the Patent is ſuch.

M *The King to his beloved &c. Know that we have conſtituted you our Juſtices, the Aſſiſe to take which B hath arraigned before you by our writ, againſt* N. *of a certain poole made in C. in the County of S. to the nuſance of his franktenement in L. in the County of H. and therefore &c. that at certain, &c. in the Confine of the County foreſaid, which to this you ſhall provide that Aſſiſe you ſhall take to do what to Juſtice belongeth ſaving, &c. for we have commanded our Sheriff, &c. of the County aforeſaid, that at a certain day and place in the confine of the County aforeſaid, which you ſhall cauſe them to know, that Aſſiſe before you you cauſe to come, &c. In teſtimony of which, theſe our Letters we have cauſed to be made Patent. Witneſs, &c.*

N And a man ſhall have the like Writ, If a man have a way to his Land, or houſe, and another ſtop the way, he ſhall have an *Aſſiſe* of *Nuſans* for that ſtopping; and if the way be in one County, and the Land to which the way is be in another County. Then he ſhall have two writs of Aſſiſe of *Nuſans* to each County one, and a Patent made to certain perſons, as is aforeſaid; and the form of the Writ is ſuch

21 E. 3. 32. 20 E. 3. 18. 19 E. 4. Fitz Nuſans 3. Ve. 11. H. 4. 25. It ſhall be brought in *Conſimili Comitatu.*

The King &c. A. hath plained to us, that B. injuſtly and without Judgement hath ſtreightned a certain way in B. in thy County to the Nuſans of his franktenement in C. in the County of H. after the firſt, &c. and in the mean time cauſe twelve, &c. to view that way, and the names, and ſummon, &c.

And unto the Sheriff where the Land is to which the way belongeth, he writ is; *Why hath he diſtreined a certain way in B. in the County of C. to the nuſans of his franktenement in S. after the firſt paſſage &c. and therefore we command thee to view the Tenement, and their names to imbreviate and ſummon &c. at a certain &c. in the Confine of the County foreſaid, which the ſame, &c.* and the Patent is ſuch.

The King to his beloved, &c. Know, &c. the Aſſiſe to take, which by our Writs, &c. of a certain way ſtreigtned in B. in the County of Bedford, *to the nuſans &c. in C. in the County of* Huntington, *and therefore &c.* as above.

And a man ſhall have a VVrit of Aſſiſe, *Why injuſtly and* O
11 H. 4. 25. *without judgement hath he raiſed or caſt down a certain ditch in N. to the nuſans of his franktenement in N. &c. or levyed*
[184] *or caſt down, or exalted or de exalted a certain pool, &c. or ſtopped up, or ſtreitned a certain way in N. to the Nuſans, &c. or diverted the courſe of Water in N. to the nuſans of his franktenement in B. after the firſt paſſage, &c. as in aſſiſe of Common of Paſture unto there of that venew, to view that Ditch, that Pool, that hedge, that way, courſe of that water, and*
42 E. 3. 27. *tenements, and their names to be imbreviated, and ſummon &c.* as above, in common of paſture; and the form of the patent is.

The King to his beloved, &c. Know ye, &c. the Aſſiſe to take which A. &c. againſt B. of a certain ditch levyed or caſt down in N. Or of a certain pool exalted or de-exalted in N. or of a certain pool levied, or proſtrated in N. or of a certain hedge levied, or proſtrated in N. or of a certain way ſtreitned, or obſtructed in N. and therefore we commaud you, as above. A

And for what an Aſſiſe of Nuſans lyeth, appeareth by theſe verſes.

Foſ-

ſatum, num, s, d,
Foſ ſtag ſepe vi diverſi curſus aquarum.
i. terminari coram juſtic. aſſiſarum. i. plaitari in Banco
Poſcunt aſſiſam, mercatam feria Bancam.

And it appeareth by theſe Verſes, do ſet up a Fair or a Market unto the Nuſans of another Fair or Market, that he unto whoſe Nuſans that fair or Market is ſet up, ſhall have a Writ for ſo doing retornable into the kings Bench. And the writ ſhall be in ſuch form. 11 H. 4. 47.

The King to the Sheriff, If A. ſhall &c. then ſummon, &c. P. that he be before our Juſtices at Weſtminſter, *&c. to ſhow why he leavied a certain Market, or a certain Fair in* J. *to the nuſans of the free Market, or free Fair of him A. in the ſame Town, or in another, after the firſt paſſage, &c. as he ſaith, and have there the ſummons and this writ.*

There is alſo another form of writ for the ſame which is a *Quod permittat*, which is ſuch.

The King to the Sheriff, &c. Command P. that juſtly &c. he permit the Biſhop of Lincoln *to put down a Certain Market in* Uppingham, *which P. of M. father of the aforeſaid P. whoſe heir he is injuſtly, &c. levyed to the Nuſans of the free Market of* C. *lately Biſhop of* Lincoln, *Predeceſſor of the foreſaid Biſhop in* Luddington, *as he ſaith, and unleſs he ſhall do it, and the aforeſaid Biſhop ſhall ſecure thee, &c. then ſummon the foreſaid P. that he be &c. to ſhow why, &c.*

And that writ was granted by the chief Juſtice and Clerks of the Chancery, by which it ſeemeth, that a man may diſturb another to have or keep any Fair, or Market unto the Nuſans of his Fair or Market.

By the Statute of 6R. 2. the plaintiff may chooſe to have it before the Juſtices, or the Sheriff, Regiſter 199.

VVRits of *Nuſans* which are vicontiel, are thoſe which do appear by the verſes following. B

rica, ca, gultum, ges, lendinum
Fab fur porta, domus vir gur mo
Et Pons, Eradantur hæc vicecomitibus.

And the form of the writ is ſuch. *The King to the Sheriff, &c.* A. *hath plained to us, that* B. *hath injuſtly levyed or caſt down a certain houſe, or ſtopped up a certain gorſe in* N. *to the Nuſance, &c. in the ſame Town, or in an another after the firſt paſſage, &c. into* Gaſcoign, *and therefore we command thee that thou hear that plea, and after it juſtly thereupon to be deduced thou cauſe, that no more a clamour we may hear for want of Juſtice.*

After the ſame manner are Writs, *de ovili, porta virgulta molendino, Latrina et ſimilibus Locatis vel proſtratis.* And thoſe C VVrits may be removed at the ſuit of the Plaintiff or defendant out of the County into the Common Pleas by a *Pone* with cauſe ſhewed in the Writ, as in a Replevin of his Cattel, and the *Pone* is ſuch.

The King to the Sheriff, &c. put at the ſuit of the plaintiff the plea which is in thy County by our Writ, betwixt A. *and* B. *of a certain houſe erected or caſt down, in* C. *by him* B. *injuſtly erected, or totally caſt down as is ſaid, and ſummon, &c.* as in a Pone of Cattel.

Regiſt. 199. And the Rule in the Regiſter is, That if he who erected, or throweth down a houſe wall of the like dieth, that he to whoſe Nuſans it is or his heir, ſhall have a *quod permittat* againſt his heir who did the Nuſans, which Writs are amongſt the Writs of *quod permittat.*

And a man ſhall have an Aſſiſe of Nuſans for building D
18 E. 3. 22. Nuſans 2. of a houſe higher then his houſe, and ſo neer his, that the rain which falleth upon that houſe, falleth upon the Plaintiffs houſe.

4 E. 3. Fitz. Nuſans 8. And a man ſhall not have an Aſſiſe of Nuſans of a way, E if it be not appendant or appurtenant to his Free-hold, as if a man build a houſe over the way which I have to my

my houſe, or to the Church, I ſhall have an Aſſiſe of nuſance. 46 E. 3. 23.

F And in a Writ of Nuſans, the Defendant ſhall have the View, and ſhall be eſſoined; and if afterwards he make default, a diſtreſſe ſhall be awarded againſt him for to anſwer, &c. and not to ſave his default, *P.* 42. E. 3. 9. 50 E. 3. 11.

And if a man levy a Nuſans unto the houſe of another
G who hath therein an eſtate but for term of years, then he ſhall not have an Aſſiſe of Nuſans, but an Action upon the Caſe againſt him, becauſe he hath no Freehold, but yet it ſeemeth, he may enter and abate the Nuſans. [185] But his leſſee ſhall have. 22 H. 3. Fitz Aſſiſ. 437.

A And if a Writ of Nuſans be removed out of the County, and the Sheriff retorn, that the Defendant hath not any thing, &c. The party ſhall have Attachment, Diſtreſs, and no other proceſs, &c. becauſe it toucheth Free-hold. But in an Aſſiſe of Nuſans the proceſs is as in Aſſiſe of *Novel diſſeiſin.*

B And the Pariſhioners may pull down a wall which is ſet up to their Nuſans in their way to the Church, *quod ve.* 6 E. 2.

And in an Aſſiſe of Nuſans he may in his plea ſhew the
C Nuſans to be to diverſe Freeholds.

D And if the wayes be ſtreightned, or the Alleys or Lanes in any Town, City, or Borough Corporate be filled with filth or dung, or ſuch things by which means infection may increaſe, Then he who will ſue may procure ſuch VVrit to have them cleanſed and made clean; and the writ is ſuch.

The King to his Mayor and Baily of Oxford *greeting, becauſe from teſtimony faith-worthy we have received, that by dung and dunghill, Hogſties and frequent acceſs of Hogs, and much other filthineſs which in the wayes and Lanes of the City foreſaid, and the Suburbs of the ſame are, the air there is ſo much corrupted and infected, ſo that the Maſters and Scholars in the ſame abiding, and others there converſant and paſſing with abominable horrour are ſtrucken, the commodity of the healthful air is hindred, the eſtate of men grievouſly hurt, and other intollerable diſcommodities, and many dangers from ſuch corruption are known to come, to the annoyance of the Maſter and Scholars aforeſaid, and others there converſant and paſſing,*

paſſing, and manifeſt danger of their lives, we not willing ſuch enormous faults, and intollerable, there farther to endure, command you that all the ſtreets, and Lanes in the Town foreſaid, and its Suburbs, from the dung and dunghills, and other pitbineſs foreſaid to be cleanſed, and cleanſed hereafter to be kept, without delay ye cauſe, that by the corruptions of filth, foreſaid, no damage nor peril to any through your default may come for the future; for which you as contemners of our mandate grievouſly to take we ought. Witneſs, &c. And upon that he ſhall have an *Alias*, a *Pluries*, and *Attachment*, if they do not cleanſe them, &c. But for Villages in the County which are not corporate, ſuch writ doth not lye.

Writ de Aſſociation in Aſſiſe, and of Writs de Si non omnes.

A Writ of *Aſſociation* is a Patent made to one or more when an *Aſſiſe of Novel diſſeiſin*, Or Certificate upon *Aſſiſe of Novel diſſeiſin* is ſued. Then the King of his own Motion, or the Plaintiff may ſue to have other perſons aſſociated unto the Juſtices of Aſſiſe to take that Aſſiſe; and the form of the Writ or Patent is ſuch. E

16 Aſſ. 6. Aſſiſe 206. Note, there is one *Si non omnes* generall which is entred of Record, and remains with the Juſtices for their warrant to take other Aſſiſes; and the ſpecial, *Si non omnes*, is annexed to the Record, and ſent as parcel.

The King to his beloved and truſty C. *and* D. *or to his beloved and truſty* F. *greeting. Know ye that we have aſſociated you, or either of you, Or you to our beloved and truſty* A. B. *and* G. *the aſſiſe of Novel Diſſeiſin to take which* F. *hath arraigned before the aforeſaid* A. B. *and* G. *by our Writ againſt* H. *of the Tenements in* N. *yet ſo that if at a certain day and place which the ſame* A. B. *and* G. *to this ſhall provide, or either of you, or you ſhall happen to be preſent, then you, or either of you, to this for Companions or Companion they ſhall admit, otherwiſe the ſame* A. B. *and* G. *not expected your preſence, or of either of you, to the taking of that aſſiſe ſhall proceed, and therefore we command you, that you or either of you, or you to the taking of that aſſiſe together with the foreſaid* A. B. *and* G. *intend in the form foreſaid to do thereupon what to Juſtice belongeth according to Law and Cuſtome of*

our

our Realm ſaving to us our amercements thence provenient. For we command the ſame A. B. *and* G. *that you or any of you, or you to this, for Companions, or Companion they admit, as aforeſaid is. In teſtimony of which theſe Letters, &c.*

See for the expoſition of (*alter*) Dyer 310. 338.

And upon that Parent of *Aſſociation* the King ſhall ſend his Writ unto the Iuſtices of Aſſiſe, commanding them thereby to admit him or them, &c. and the Writ is ſuch.

L. 5. E. 4. 11. Br. Aſſiſe 336.

The King to his beloved and truſty A. B. *and* G. *greeting. Know ye that we have aſſociated to you our beloved, and truſty* C. *and* D. *or either of them.* Or thus, *Our beloved and truſty* F. *the Aſſiſe of Novel Diſſeiſin to take which* E. *hath arraigned before you by our Writ againſt* H. *and others in our Writ original contained, of the Tenements in* N. *or of the Common of Paſture in* N. *yet ſo that if at a certain day and place, which to this ye ſhall provide, the ſame* C. *and* D *or either of them.* Or thus, *him* F. *for Companions or Companion ye admit, otherwiſe you not expelling the preſence of them* C. *and* D. *or either of them.* Or thus, *Or of him* F. *to the taking of that Aſſiſe may proceed; and therefore we you command, that them* C. *and* D. *or either of them.* Or thus, *Or him* F. *to this for Companions or Companion you admit in the form foreſaid. For we have commanded the ſame* C. *and* D. *that they or any of them.* Or thus, *Or the ſame* F. *that together with you this they intend, as foreſaid is, Witneſs &c.*

F And if ſeveral Aſſiſes, or Certificates of Aſſiſes be ſued before ſeveral Iuſtices in one County, for Lands, Tenements, Rents, or Commons, and afterwards the King maketh new Iuſtices to take all Aſſiſes or Certificates, and Iuries which are to be taken in the ſame County, the King may make an Aſſociation to the Iuſtices new aſſigned; thus.

The King to his beloved and truſty W. *of* D. R. *of* A. *and* R. *of* P. *greeting. Know that whereas we have conſtituted you our Juſtices all Aſſiſes, Juries, and Certificates before whatſoever our Juſtices by Writs in the County of* Lincoln *arraigned to take and after we command you, that if all you at the taking of the aſſiſe in Juries and Certificate foreſaid cannot be preſent, then two of you whom it ſhall happen to be preſent at the taking of the aſſiſe, Juries and Certificate according to law, and cuſtome of our Realm ſhould proceed, We have aſſociated to you our beloved*

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loved and truſty A. *the Aſs. Jur. and Certificate foreſaid together with you to take, yet ſo that if at a certain day and place which you or two of you to this ſhall provide him* A. *ſhall happen to be preſent, then you or two of you him* A. *for your Companion ſhall admit, otherwiſe you or two of you the preſence of him* A. *not expected, to the taking of the aſſiſ. Jur. and certificat. foreſaid may proceed, and therefore, &c. we command, &c.*.

And the Patent made to him who ſhall be aſſociate, reciting the Patent made to the Juſtices, and the writ of *Si non omnes*, and then ſhall ſay *aſſociavimus vos &c.* And the form is ſuch.

The King to his beloved and truſty A. *greeting, know, that whereas we have conſtituted our beloved and truſty* VV. *of* D. R. *of* A. *and* R. *of* P. *our Juſtice all Aſſ Jur. and Certif. before whatſoever our Juſtic. by our Writs in the County* Lincoln *arraign. to take, and after the ſame* W. *of* D. R. *and* R. *commanded that if they all to the taking of the aſſ. Jur. and Certif. foreſaid conveniently cannot be preſent; then two of them who then ſhall happen to be preſent to the taking of the Aſſ. Jur. and Certif. foreſaid according to law, and Cuſtome of our Realm ſhould proceed, we have aſſociated you to the aforeſaid* W. R. *and* R. *and to two of them, the aſſ. Jur. and Certif. foreſaid in the County foreſaid to take, yet ſo that if at certain dayes and places which the ſame* VV. R. *and* R. *to this ſhall provide, you ſhall happen to be preſent, then they or two of them to this for their Companion ſhall admit you, otherwiſe the ſame* VV. R. *and* R. *or two of them the preſence not expected, to the taking of the ſame Aſſ. Jur. and Certif. foreſaid ſhall proceed, and therefore we command you, that to the taking of the Aſſiſ. Iur. and Certificat. aforeſaid, together with the aforeſaid* VV. R. *and* R. *or two of them ye intend in the form foreſaid to do, &c. ſaving, &c. For we command the ſame* W. R. *and* R. *that they or two of them to this admit you for a Companion, as aforeſaid is in, &c. of which &c. theſe our Lettere we have cauſed to be made Patent, witneſs, &c.*

L. 5. E. 4. 11. Br. Aſſ. 386. And afterwards when the King hath made his Iuſtices of Aſsiſe by Letters Patents; and by other Letters Patents hath aſſociated unto them another perſon, yet he is uſed afterwards to make other Letters Pattents A

as

as well unto the Juſtices of Aſſiſe, as to thoſe whom he hath aſſociated unto them, that if they all do not come at one time, to take thoſe Aſſiſes, Juries, and Certificates, that then thoſe who do come ſhall take the ſame Aſſiſes, Juries, and Certificates: and that Patent is called a *Si non omnes*: and the form of the Patent is ſuch.

The K. to his beloved and truſty W. *of* D. R *of* A. R. *of* P. *and* A. *of* B. *greeting; whereas we have conſtituted you our foreſaid* W. R *and* R. *our Juſtic. all the Aſſiſe, &c. to their arrain. to take, and after to you the foreſaid W. R. and R. we have ſhown that if you all &c. ye ſhould proceed ſubſequen. that we aſſociate to you, and to two of you the foreſaid A. the Aſſiſe, Juries, and Certificate foreſaid in the County foreſaid to take, we command you that if you all to the taking of the Aſſiſe, Jury and Certificate cannot conveniently be preſent, then three or two of you of which either of you the foreſaid* W. R. *and* R. *one we will to be, to the taking of the ſame Aſſ. &c. according to law and cuſtome ſhall proceed, &c. witneſs, &c.*

B And theſe three Patents next before are commonly made when any Aſſiſe is ſued; as one to the Juſtices of Aſſiſe, and another Patent to the Clerk of the Aſſiſes of Aſſociation, and the Patent of *Si non omnes*, as well made to the Juſtices and the Clerk of the Aſſiſes together.

And if the King make his Juſtices of Aſſiſe in any County, and afterwards he maketh an aſſociation to them, and a Patent of *Si non omnes, &c.* And afterward divers aſsiſes or Certificates of aſsiſe remain before them not determined. The King at the next Aſſiſes may make a new Commiſſion unto other Juſtices to take all thoſe Aſſiſes and Certificates, and may make a new aſſociation unto them by another Patent, and a *Si non omnes* alſo directed unto them.

But a generall Patent of Aſſiſe to take all Aſsiſes 32 H. 6. 10.
A and Juries, &c. an aſſociation lyeth. But M. 32. H. 6. it is holden, that an aſſociation after another aſſociation allowed and admitted doth not ly, nor that the Juſtices

Juſtices then do not admit other aſſociation in that writ afterwards ſo long as that Writ and Commiſſion ſtands in force.

L. 5 E. 4. Br. Aſſiſe 386.

But in a ſpecial Aſſiſe no Aſſociation ſhall be made as it is holden the ſame year M. 32. H. 6. for he hath not in the writ theſe words; *Et his quos ſibi aſſociavimus.* But the VVrit is directed to the Sheriff without thoſe words in the VVrit, nor thoſe words are not in the Patent made to the Juſtices of that ſpecial Aſſiſe. D

But if thoſe words be in the writ, and in the Patent made to the Juſtices, then it ſeemeth an Aſſociation ſhall be made, in that ſpecial Aſſiſe, as in other. And it appeareth in the Regiſter, That other aſſociation lyeth after aſſociation in one writ. E

And upon a new Commiſſion made to other Iuſtices, the old Juſtices of Aſſiſe ſhall deliver their Records of the Aſſiſe unto the new Juſtices by Indenture, upon a writ directed to them to deliver the Records. F

And a man may ſue a Patent of aſſociation for ſeverall Aſſiſes, and the form of the VVrit is ſuch. G

[187] *We have Aſſociated you or either of you, &c. the Aſſiſe of Novel Diſſeiſin to take which* A. *hath arraigned before the foreſaid, &c. of the Tenements in* N. *and Aſſiſe of Novel Diſſeiſin to take* C. *arraigned before the ſame, &c. againſt the aforeſaid* B. *of the Tenements in the ſame Town, yet ſo that if, &c.*

And if the King make two men his Juſtices of Aſſiſe in one County, and afterwards one of them is elſewhere in the Kings ſervice, ſo that he cannot intend to take thoſe Aſſiſes or Juries, then the King by his Patent may make another man Juſtice in his Room, to take thoſe Aſſiſes and Iuries, and that patent is in the nature of an aſſociation; and the form is ſuch. A

The King to his beloved and truſty A. *greeting. Know ye that whereas we have lately conſtituted you and our beloved* H. *our Juſtic. all the Aſſiſes, Juries, and Certificates before whatſoever our Juſtic. by our Writs in the County of L. arraigned to take, and the aforeſaid* G. *certain our ſervice by our command elſewhere intendeth, by which to the taking of the ſame Aſſiſe, Juries, and Certificate he is not at leaſure, as we have received,*

mand elſewhere intendeth, by which to the taking of the ſame Aſſiſe, Jur. and Certificat. he is not at leaſure, as we have received, in the place of him G. *we have conſtituted our beloved and truſty* W. *our Juſtic. the Aſs. Jur. and Certificate foreſaid together with you to take, and therefore we command you that him* W. *in the place of him G. to this for a companion you admit, in the form foreſaid; For we have commanded the ſame* W. *that in the place of him* G. *together with you to this he ſhall intend, &c.*

Yet he is Judge before they admit him by Markh. L. 5. E. 4. 111. Br. Aſſ. 386.

And a Patent ſhall be made to him who ſhall be Aſſociate unto them in the place of G. which ſhall be ſuch.

The King to his beloved and truſty VV. *greeting, whereas lately we have conſtituted our beloved and truſty* A. *and* C. *our our Iuſtic. all the Aſs. &c. as above to there, as we have received in the place of him* G. *we have conſtituted you our Iuſtic. the Aſs. Jur. and Certif. foreſaid, together with the foreſaid* A. *to take, and therefore we command you that in the place of him* G. *together with the aforeſaid* A. *to this you intend in the form foreſaid to do, &c. ſaving, &c. for we have commanded the ſame* R. *that you in the place of him* G. *to this for a companion he admit, as aforeſaid is. In &c. of which, &c.*

B And if the King make three Juſtices of Aſſiſe and afterwards one of them dyeth, the King may make a new Patent of Aſſociation unto another to aſſociate him and the two, in the room of him who is dead, and a cloſe writ ſhall be directed to the two Juſtices who are alive to admit him, &c. and it appeareth by the Writ that if the King maketh three Juſtices to take Aſſiſes, and make them a Pattent of *Si non omnes*; that if one of them dyeth yet the other two may proceed. And the Patent is ſuch.

The King to his beloved and truſty I. *of* O. *greeting. Know ye that whereas lately we conſtituted our beloved. and truſty* I. I. *and* S. *our Juſtic. all the Aſs Jur. and Certif. before whatſoever our Juſtic. by our writs in the County of* S. *&c. arrain. to take, and after the death of the aforeſaid* S. *diverſe Aſs. Jur. and Certif. before the foreſaid* I. *and* I. *arrain. are, we for certain cauſes have conſtituted you our Juſtic as well all the Aſſiſe Jur. and Certif. before the aforeſaid* I. I. *and* S. *and after before certain our Juſtic. in the foreſaid arrain. to-*

L. 5. E. 4. 111. Br. Aſſ. 386.

gether with the ſame I. *and* I. *to take, and therefore we command you, that the ſame Aſſ. Jur. and Certif. together with the foreſaid* I. *and* I. *to take you attend in the form aforeſaid to do, &c. ſaving, &c. for we have commanded the aforeſaid* I. *and* I. *that to this they admit you for a Companion, as foreſaid is and a cloſe.* And a cloſe writ ſhall be directed to the Juſtices to admit the ſaid Juſtice W. into that Society.

And the King may make Aſſociation in Juries as well in Aſſiſes, and alſo in attaints. And if the King make a Commiſſion to take an attaint or other Jury, and an Aſſociation in the ſame, and after one of the Juſtices dyeth, the King may make a new Aſſociation in the ſame Writ, and ſo he may make one Aſſociation after another in the ſame Writ, as appeareth by the Regiſter; and the Writ is ſuch.

The King to his beloved, &c. I. *of* M. K. *of* M. *and* I. *of* P. *greeting; whereas lately we conſtituted* W. *of* O. *and you the foreſaid* I. *of* M. *and* R. *our Juſtic. the Jur. of* 24. *Knights to take, which* R. *hath arraigned before the aforeſaid* W. *and you the foreſaid* I. *of* M. *and* R. *by our Writ againſt* P. *to make convict the juries of the Aſſiſe of Novel Diſſeiſm which betwixt him* P. *and the foreſaid* R. *ſum. was, and taken by our Writ at* H. *before the foreſaid* W. *and you the aforeſaid* R. *of Tenements in* S. *in the County of* N. *and after by our Writ, we aſſociated to you the foreſaid* I. *of* M. *and* R. *the foreſaid* I. *of* F. *all the Aſſ. Juries, &c. in the ſaid County arraigned, together with the foreſaid* W. *and you with the foreſaid* I. *of* M. *and* R. *or two of you to take, and that Jur. before the foreſaid* W. *and you the foreſaid* R. *and* I. *of* H. *by vertue of the aſſociation foreſaid, to the taking of the ſame was impleaded, and the ſame* W. *now is deceaſed, in the place of him* W. *we have conſtituted our beloved and truſty* B. *that Jury together with you to take, we command you, that the foreſaid* B. *in the place of him* W. *to this you admit, and that Jury to take together with him you proceed, according to Law and Cuſtome of our Realm; For we have commanded the aforeſaid* B. *that together with you to this he intend, as aforeſaid it is.*

And thereupon another Patent ſhall be made to the ſaid B. of aſſociation, as before in other Caſes.

And an Aſſociation may be made unto the Sheriffe upon

upon a Writ of *Redisseisin* directed to him as well as it may be upon an Assise of *Novel disseisin* as appeareth by the Registers; which writ was awarded by *W. de Harlesston.*

For by 2 H. 4. 2. he is Officer, Judge, and Commissioner in this Writ.

A And although the assise be discontinued for not coming of the Justices, &c. yet when the Reattachment is sued, The writs of Association, and of *Si non omnes* stand in in force; and a Reattachment shall or may be sued to revive those Assises; and although there be several adjournments of the Assises, yet the Associations and VVrits of *Si non omnes* shall serve for all the Assises.

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12 H. 4. 19. 20. L. 5. E. 4. 111. Br. Ass. 386. 14 Ass. 15. B. Assise 196.

Writ of Redisseisin.

B THe VVrit of *Redisseisin* lyeth; where a man doth recover by Assise of Novel Disseisin Land, Rent, or Common, and the like, and is put in possession thereof by verdict, and afterwards he is disseised of the same Land, rent, or common by him by whom he was disseised before, Then he shall have this writ upon the Statute of *Merton*, cap 3. and the form of the writ is such.

C *The King to the Sheriff, &c. Have shown unto us* A. *and* B. *his wife, that whereas* R. *sometime the husband of her* B. *and she* B. *in our Court before our Justices last itinerant at N. in thy County.* Or thus. *before our beloved and trusty H. and K. our Just. the Assise in the County foresaid to take assign. if the Justices were dead before H. and his Companions lately our Justic. the Assise in the County foresaid to take assign. at N. had recovered their seisin against S. of twenty acres of Land, and ten shilling of rent with the appurtenances in K. by recogn. of Ass. of* novel disseisin *betwixt them, &c.* Or thus, *before the foresaid A. B. and S. taken, the foresaid S. them A. and B. of the foresaid Land, and rent.* Or thus, *of one acre of Land of the Land foresaid, again injustly hath disseised, and therefore we command thee, that taking with thee the Keep. of the pleas of our Crown, and twelve as well Knights as other free, and legall men of thy County, as well of those who in the first Jury were, as others, in thy proper person thou go to the foresaid Land and Tenement, whence that rent commeth, and by their oaths diligently thereupon thou make Inquisition, and if them A. and B. by the foresaid S. of the Land aforesaid, and*

Rent again injuſtly diſſeiſed thou ſhalt find, then him S. take, and in our priſon ſafely to be kept cauſe, ſo that from that priſon by no means to be delivered without our command Special, and them A. and B. of the aforeſaid Land, and rent to be reſeiſed, and their double damages which by occaſion of that rediſſeiſin they have ſuſtained by oath of the aforeſaid twelve to be taxed, and of the Lands and Chattels of the aforeſaid S. in thy Bailywick without delay to be levied, and the ſame A. and B. to have cauſe according to form of the Statute of ſuch Rediſſeiſin provided, and warn the foreſaid S. or the foreſaid S. and D. who that Land now hold, that they be preſent at the making that Inqueſt, if to them it ſhall ſeem expedient. Witneſs, &c.

And by that writ appeareth, That a man ſhall have a D Rediſſeiſin againſt the Tenant, if he recover by aſſiſe of *Novel Diſſeiſin* before Juſtices in Eyre, or before Juſtices of Aſſiſe: and ſo if he recover in aſſiſe of *Novel Diſſeiſin* in the Kings Bench, or Common Pleas, if he be rediſſeiſed he ſhall have that Writ.

If Husband and Wife be diſſeiſed and recover by aſſiſe, E and the Husband dyeth, and the wife taketh another husband, and they be diſſeiſed again, By the Regiſter they ſhall have a Writ of *Rediſſeiſin*, although the husband were not diſſeiſed before; and the writ willeth that the Sheriff enquire whether they were diſſeiſed before: and ſo the husband was not, but that is not material, becauſe it is the Right of the wife, and ſhe was diſſeiſed before. But if the wife loſe in the *Aſſiſe of Novel Diſſeiſin*, and afterwards take husband, and they rediſſeiſin, *quod vide. H.* 9 H. 4.

And alſo a Rediſſeiſin lyeth againſt him who committed F the rediſſeiſin, and againſt another who was not diſſeiſor, if he be Tenant of the Land.

And alſo if a man recover Land by Aſſiſe of *Novel Diſs.* G and after is rediſſeiſed of parcel of the ſame, he ſhall have a writ of *Rediſſeiſin*.

And in a *Rediſſeiſin* againſt husband, and wife, the Writ H ſhall be thus in the end. *And to the ſame* A. *his damages to the double which by occaſion of ſuch rediſſeiſin he hath ſuſtained of the Lands of them* B. *and* S, *and of the Chattels of him* B. *in thy Bail.* becauſe the wife hath not any Chattel.

And

I And if the Sheriff will not execute the writ of *Rediſſeiſin*, he ſhall have an *Alias* and a *Pluries* directed to him, and if he then do it not, he ſhall have an *Attachment* againſt him to the Coroners, *&c.* and upon the ſame diſtreſs *infinite*,

K And it apperreth in the Regiſter, That a man ſhall have a Writ of Aſſociation in a *Rediſſeiſin*, and the writ is ſuch.

The King to the Sheriff, &c. Know ye that whereas lately at the proſecution of N. ſuggeſting to us him in our Court before &c. at K. *by our Writ to have recovered againſt S. &c. reciting the whole Writ to there, if it ſhall ſeem to him expedient, we have aſſociated to thee our beloved and truſty* R. *the premiſes with thee to do and fulfill, yet ſo that at a certain day which to this you ſhall provide, it happen him* K. *to be preſent, then him to this for a Companion admit thou, otherwiſe not expelled the preſence of him* R, *the premiſes to do and fulfill proceed thou, and therefore we command thee that thou admit him* R. *to this for a Companion in the form foreſaid; For we have commanded the ſame* R. *that the premiſes with thee to do and fulfill he intend as foreſaid is.*

And by the Regiſter the VVrit directed to the Sheriff ſhall be cloſe, as alſo the other Writ directed unto him who is aſſociated to him, and yet the ſame is in its nature a Patent.

L And if a man recover by Aſſiſe of *Novel Diſeiſin* Common of paſture or other profit apprender in the ſoil of another, or any Office, or Corody; if he be rediſſeiſed, he ſhall have a Rediſſeiſin; and the VVrit ſhall be ſuch.

The King to the Sheriff, &c. A. *hath ſhown us, that whereas he in our Court before our beloved and truſty W. and his Companions our Juſt. the Aſſiſe, &c. aſſign. at N. by our Writ recovered his ſeiſin againſt* I. *of the Common of Paſture in S. which belonged to his franktenement in the ſame Town, by recognit. of* [189] *Aſſiſe of Novel Diſſeiſin there thereof betwixt them taken, the foreſaid* I. *the aforeſaid* A. *of the aforeſaid Common again injuſtly diſſeiſed, and therefore, &c. go thou to that paſture, and by their oath, &c. of his reaſonable eſtovers ſo recovered his ſeiſin againſt* I. *of his reaſonable eſtovers to be taken in three theuſand acres of wood with the appurtenances in* VV. *which belong to his franktenement in the ſame Aſſiſe by recogn. of Aſſiſe, &c.*

And if a man recover by *Assise of Novel disseisin* any land A or Tenement before the Bailies of any Liberty, where they demand conusans of pleas before the Justices of Assise, and the Justices grant the same, because the Lands are within that Liberty, and afterwards he is redisseised of the same Land, then he shall have a writ of Redisseisin; and the Writ shall be such.

The King to the Sheriff of Bark. *greeting.* A. *hath shown us that whereas he lately arraigned a certain Assise of Novel disseisin before our beloved and trusty* I. *and his Companions, &c. assign. by our Writ against* P. *of two foot of Land in length, and one foot of Land in breadth with the appurtenances in* W. *which Assise by the same Iustices in the Court of the Abbey of* Reading, *according to the Liberties to the same Abbot by the Charters of our Progenitors sometime Kings of* England, *and our confirmation granted, before the Bayly of the same return. was to be pleaded, and the same* A. *his seisin of the Land foresaid against the foresaid* E. *in the same Court had recovered, by recognit of Assise of Novel Disseisin there betwixt them taken, the foresaid* E. *him* A. *of the foresaid &c. again, &c. as in the first* Writ.

And also a man shall have a Redisseisin upon a recovery in Assise of Nusans, *of a pool injustly levied, &c. or of a course of water diverted, or of a way streitned or obstructed;* and the form of the Writ is such.

The King to the Sheriff, &c. A *hath shown us, &c. to there* B *assign. hath arraign a certain Assise against* B. *by our Writ, of a certain pool injustly levied in* N. *to the nusans of his frank-tenement in* K. *and by the recognit. of the same assise thereupon betwixt them at* E. *taken before the same Iust. hath dreined that pool by the foresaid* B. *levied to be thrown down, hath the aforesaid* B. *that pool injustly, and without judgement levied, and because this is injust and manifestly against our peace, we command thee, that taking with thee, &c. as above, thou go to that pool and tenement, and by their oath diligently thereupon thou make inquisition, and if by this inquisition thou shalt find, that the foresaid* B. *that pool again hath injustly levied; then him* B. *take, &c. to there, special. and that pool without delay to be thrown down, and to the same* A. *his double dammages, which by occasion of this redisseisin he hath sustained, &c. to there without delay to be levied, &c. to have*

cause

A *cauſe according to the form*, as above; and the like Writs are in the Regiſter of Rediſſeiſin, for the miſ-turning of a Mill, or of a Way, or of an Office, and the like.

C And if the Sheriff do deliver any ſuch without the ſpecial Command of the King, who are convict of ſuch Rediſſeiſins, he ſhall be grievouſly amerced, and notwithſtanding thoſe who are ſo delivered ſhall be alſo grievouſly puniſhed, &c. by the Statute of *Marlbridge*, cap. 8.

And by the Statute of *Weſt.* 2. cap. 26. he who recovereth in a *Rediſſeiſin*, ſhall recover double damages; and the Defendants ſhall not be bailed by a Common Writ: and by the ſame Statute is given a Writ of *Poſt Diſſeiſin*, in which writ he ſhall alſo recover double damages againſt the defendant.

D And if a man do recover by *Rediſſeiſin*, and afterwards is diſſeiſed again by him by whom the firſt rediſſeiſin was before, he ſhall have a new *Rediſſeiſin*; and ſo one *Rediſſeiſin* after another every time he is rediſſeiſed.

E And a Rediſſeiſin ſhall be maintainable againſt any of the diſſeiſors.

F And if a man recover Land by Aſſiſe of *Novel Diſſeiſin* unto which a Common is appendant, &c. and after he is diſſeiſed of the Common again, he ſhall have a *Rediſſeiſin*, &c.

G And if a man ſue a Writ of *Droit Cloſe*, and make Proteſtation in the nature of aſſiſe of *Novel Diſſeiſin*, and recover in that VVrit, and after is rediſſeiſed, he ſhall not have a *Rediſſeiſin*; for that writ doth not ly upon an Aſſiſe at the Common Law, *M.* 14. *E.* 3.

H And if all the Jurors in the aſſiſe be dead but one, and afterwards he who recovered is rediſſeiſed, &c. it is a queſtion whether he ſhall have a *Rediſſeiſin*, becauſe that the Statute is, *per primos Juratores & alios*, &c. which he debated in *H.* 8. *H.* 5. But it ſeemeth that the Statute makes the Law, and becauſe it is a penal Statute, it ſhall be taken ſtrictly; and therefore if all the Jurours be dead but one, that he ſhall not have a *Rediſſeiſin* becauſe he cannot be tryed by the former Jurours; for one Iurour is not a ſufficient witneſs himſelf; to ſay that it is a Rediſſeiſin of the ſame Tenements; and therefore it ſeemeth there ought to be two Iurours to teſtifie the ſame.

And Tenant by Statute Merchant or Staple ſhall have I an aſſiſe of *Novel diſſeiſin*, if he be ouſted; and alſo a Rediſſeiſin if he be rediſſeiſed.

And ſo Tenant by *Elegit*, ſhall have an aſſiſe of *Novel Diſſeiſin*; and a *Rediſſeiſin* if he be ouſted, by the Statute of VVeſt. 2. cap. 18.

Writ of poſt Diſſeiſin.

[190] THe VVrit of *Poſt Diſſeiſin* is given by the Statute of *weſt.* 2. cap. 26. and lyeth where a man recovereth A Lands or Tenements by a *Precipe quod reddat*, by default or reddition, and afterwards he is ouſted again by him againſt whom he recovered, &c. Then he ſhall have that writ of *Poſt diſſeiſin*, and ſhall recover double damages, and the party ſhall be puniſhed as he ſhall be if he were attainted of *Rediſſeiſin*: But if he recover by aſſiſe of *Mordaunceſtor* or *Juris utrum*, or in thoſe actions which paſſe by Juries and Verdicts, then he ſhall have writ founded upon the Statute of *Merton*, cap. 3. of *Poſt Diſſeiſin* And that writ ſhall be directed to the Sheriff as the writ of *Rediſſeiſin* ſhall be; and if the Sheriff will not execute the VVrit as he ought to do, and as he is commanded, Then he may ſue forth an *Alias* and a *Pluries vel cauſam nobis ſignifices*, &c. and that do not any thing, nor retorn a Cauſe, Than the party may ſue an Attachment againſt the Sheriff directed to the Coronors, &c and upon that a Diſtreſs; and the form of the VVrit of *poſt Diſſeiſin* is ſuch.

The King to the Sheriff, &c. A. hath ſhown to us, that where- B
as he in our Court before our beloved and truſty VV. *and his Companions our Juſtices of the Bench at E. by our writ recovered his ſeiſin againſt one* I. *of one meſſuage with the appurterances in S. by conſideration of the ſame Court, the ſame* I. *the foreſaid A. of the Land foreſaid after injuſtly hath diſſeiſed, and therefore we command thee, that taking, &c. (as in the VVrit of rediſſeiſin, &c.) legall men of thy County thou go, &c. to there of the foreſaid Land after injuſtly diſſeiſed thou ſhalt find, then him* I. *&c. to there, which by occaſion of that poſt Diſſeiſin he hath ſuſtained, &c. according to form of the Statute of* VVeſtm. *concerning ſuch Poſt diſſeiſin provided, and*

warn

warn the foreſaid I. *that at that Inquiſition, &c.*

And in a *Poſt Diſſeiſin* the Writ ſhall not ſay, *as well of thoſe who in the firſt Jury*, but in caſe where he recovereth by recogniſance of the Aſſiſe, or Jury.

C And if a man recover Lands or Tenements in value againſt the vouchee in a *Precipe quod reddat* by default, and afterwards that he is put in execution by the Sheriff, the vouchee doth diſſeiſe him of the ſame Lands which he ſo recovered in value, He ſhall have a *Poſt Diſſeiſin* of that Land ſo recovered in value againſt the vouchee; and the Writ is ſuch:

The King to the Sheriff, &c. C. *hath ſhown to us, that whereas B. Prior of D. lately in our Court before our beloved and faithfull R. F. and his companions our Juſtices of the Bench at* Weſtminſter *by Writ had demanded againſt the foreſaid* C. *ſeaven acres of Meadow with the appurtenances in* I. *and the ſame* C. R. *of* S. *thereupon in the plea foreſaid had called to warr. and by the default which the ſame* R. *after made, in the ſame Court conſidered it was, that the foreſaid Prior ſhould recover his ſeiſin againſt the foreſaid* C. *of the foreſaid plea which the ſame* C. *ſhould have of the Meadow of the aforeſaid* R. S. *to the value of the foreſaid ſeven acres of Meadow, by pretence of which condition ſeven acres of* Meadow *with the appurtenances of the Meadow of the aforeſaid* R. *of* S. *in* G. *to the foreſaid, by the then our Sheriff of* Glouceſter, *by vertue of a certain our Writ of Judgement to him in this part directed aſſigned were, the foreſaid* R. *of* S. *the foreſaid* C. *of the foreſaid Meadow as is premiſed aſſigned after injuſtly diſſeiſed, and therefore we command thee, that taking with thee, &c. twelve as well Knights, as other free and legal men of thy County in thy proper, &c. thou go to the foreſaid Meadow to the ſame* C. *aſſigned, and by their oath diligently thereupon make Inquiſition, and if him* C. *by the foreſaid* R. *of the foreſaid Meadow to the foreſaid* C. *aſſign. after injuſtly diſſeiſed thou ſhalt find, then him* R. *take thou, and in our priſon ſafely cauſe to be kept, ſo that from that priſon by no means he be delivered, without our mandate ſpecial, and him* C. *of the meadow foreſaid to be reſeiſed, and his double damages which by occaſion of* Poſt Diſſeiſin *he hath ſuſtained by the oath of the aforeſaid twelve to be taxed, and of the Lands, and Chattels of the foreſaid*

foreſaid R. in thy Bail. without delay to be levied, and the ſame C. cauſe to have according to the form of the Statute of ſuch Poſt Diſſeiſin provided, and warn the foreſaid R. &c. Witneſs, &c.

And if the Defendant make default at the *Scire facias* returned, then the Sheriff ſhall take the Inqueſt by default, and the proceſs againſt the Jury ſhall be by precept from the Sheriff to his Bailiffe, &c. to ſummon twelve, &c. D

And if a man recover in a *Scire facias* upon a fine, or upon a Recovery had before by default of the Tenant, he ſhall have a Poſt Diſſeiſin againſt the Tenant, if he afterwards ouſted of the ſame Land, *quod ve.* M. 15. H. 7. E

And if a man be convict before the Sheriff upon a *Rediſſeiſin*, and *Poſt Diſſeiſin*, then he ſhall not be delivered out of priſon without the Kings ſpecial Command, and then he ought to ſue a *Certiorari* to remove the Record into the Kings Bench, and there to agree with the King for his Fine. And thereupon he ſhall have a Writ to the Sheriff to deliver him out of priſon; and the form of the Writ to remove the Record is ſuch. F

The King to the Sheriff, &c. Of the part of Henry *of* D. *taken and detained in our priſon of* Staff. *for a certain Rediſſeiſin by him to* Iſabel, *which was lately the Wife of* R. *of* C. *of the moity of one meſſuage with the appurtenances in* C. *done as is ſaid whereof before thee and the keepers of the pleas of our Crown in thy County by Inquiſition thereupon at* C. *by our writ made convict was, we are ſupplicated that whereas he to the ſame* Iſabel *of the dam. to him in this part adjudged, now is about to ſatisfie, and ready is with us Fine for that which to us pertaineth in this part, according to form of the Statute of the Common Councell of our Realm thereupon provided to do, we would for his delivery provide, we that to* [191] *the ſame* H. *what juſt ſhall be thereupon to do we may, willing upon the Record and proceſs foreſaid of the Inquiſition to be certified we command thee, that if Judgement thereupon be given, then the record and proceſs of the Inquiſition foreſaid, with all things thoſe concern. to us under thy ſeal diſtinctly and openly thou ſend, ſo that, &c. whereſoever, &c. that further hereupon we may cauſe to be done what of right*

right, &c. is to be done, &c. Witneſs, &c.

A And that Writ of *Poſt Diſſeiſin* ought to be brought by thoſe who firſt recovered, or by ſome of them, and of the ſame Land which was recovered, or of part thereof, or againſt thoſe, or ſome of them againſt whom the recovery was.

But if a man recover by a *Precipe quod reddat*, and after he is diſſeiſed by him againſt whom he recovered, and the diſſeiſor doth make a Feoffment, and taketh back an eſtate to him and another, He who firſt recovered ſhall have a *Poſt Diſſeiſin* againſt him and his Joint-tenant, as it ſeemeth, and he ſhall be puniſhed by the Statute if it be found againſt him.

But if he who loſeth the Land by default or Reddition in a *Precipe quod reddat*, do after diſſeiſe him who recovered, and maketh a Feoffment in Fee unto another, or for life, it ſeemeth he who recovered ſhall have a *Poſt diſſeiſin* againſt him who diſſeiſed him again, although he be not Tenant of the Land; For in a Writ of *Poſt Diſſeiſin*, The Demandant ſhall not have judgment to recover the Land, &c. But the Sheriff ſhall put and reſtore the plaintiff to his poſſeſſion, if he find the diſſeiſin, &c. and ſhall take the defendant, and keep him in priſon untill &c.

B And it ſeemeth, That *Non-tenure* is no plea, in a Writ of *Poſt Diſſeiſin* for the Defendant, but he ought for to anſwer the Diſſeiſin, &c. when he comes in upon the *Scire facias*, *&c.* And if he make default upon the *Scire facias*, retorned, the Sheriff ſhall take the Inqueſt: *tamen Quære.*

Writ

9 H. 5. 12. If this Writ be brought against a Parſon, he ſhall not have Ayd of the Patron and Ordinary.

Writ of Entre in the nature of Aſſiſe, which is called, entre in de Quibus.

A Writ of *De quibus* which is brought in the p'ace of an Aſſiſe is, where a man is diſſeiſed of any Lands, Tenements, or Rents, whereof he hath an eſtate in Fee, then he may ſue that Writ, and the Writ is ſuch. C

The King to the Sheriff, &c. Command A. *that juſtly he render to* B. *one meſſuage with the appurtenances in* D. *which he claimeth to be his right, and inheritance, of which the ſame ſame* A. *injuſtly and without Judgement diſſeiſed the foreſaid* B. *after the firſt paſſage of the Lord* H. *King to* Gaſcoign, *&c. as he ſaith, and unleſs, &c.*

And if a man bring a Writ of Diſſeiſin made to his Aunceſtor, then the Writ is of another form, thus; *Command* A. *that juſtly he render to* B. *one meſſuage with the appurtenances in* D. *which he claimeth to be his right and inheritance, and of which the ſame* A. *injuſtly, and without Judgement diſſeiſed* C. *father of the foreſaid* B. *or any Anceſtour of the aforeſaid* B. *whoſe heir he is, after the firſt paſſage of the Lord King, &c as is ſaid. Or in the per, which he claimeth, &c. and into which, &c. unleſſe by* C. *who that to him demiſed, who injuſtly* E. *father, or the foreſaid* B. *&c. after the firſt, &c. and in the Per, and Cui thus, which he claimeth, &c. and into which, &c. unleſs by* C. *to whom* D. *that demiſed, who thereof injuſtly and without judgement, &c. the aforeſaid* E. *father of the aforeſaid* B. *whoſe heir he is, or the aforeſaid* B. *after the firſt &c.* And in the Poſt thus; *which he claimeth, &c. and into which &c. unleſs after the diſſeiſee which* D. *injuſtly &c. did to* E. *father or other Anceſtour of the foreſaid* B. *whoſe heir he is, or the foreſaid* B. *after the firſt paſſage, &c. as is ſaid, and whereof he plaineth, &c. and unleſs, &c.* D

And it appeareth by theſe Writs, that although he bring a Writ of a Diſſeiſin made to himſelf, or of a Diſſeiſin made to his Aunceſtours, that in both Caſes the Writ ſhall be, *Quod clamat eſſe jus & hereditatem ſuam.*

And if Tenant for life, or Tenant in tail be diſſeiſed, they may ſue a Writ for diſſeiſin *de Quibus, &c.* but in that writ it ſhall not be ſaid, *which he claimeth to be his right* E

and

and inheritance, and in his Count he shall set forth the especial estate, &c.

E And an Abbot, or a Prior, or Mr. of an Hospitall, or a Bishop shall have a writ *de quibus*, upon a Disseisin, their Predecessors of Lands, Tenements, or Rent, and the Writ shall be such.

Command A. that justly, &c. he render to the Prior of W. one messuage, which he claimeth to be the right of the Church of him the Prior of St. Mar. of N. *and into which the same* A. *hath not entred, but after the disseis. which* L. *thereof injustly and without judgement did to* R. *sometime Prior of* N. *Predecessour of the foresaid Prior after the first, &c. as is said, and whereof he plaineth, &c.*

And if it be a rent then thus: The King to the Sheriff; command L. M. *that justly, &c. he render to the Prior of* C. *three shillings of rent, with the appurtenances in* D. *which he claimeth to be the right of the Church of him the Prior of St. Nich. of* C. *and of which* VV. D. *injustly, and without judgment disseised* VV. *sometime Prior of* C. *predecessour, &c.*

G And the Aunt and the Neece shall joyn in the VVrit, upon a disseisin made to the father of the one, the grandfather of the other.

H And a VVrit of *Entre sur disseisin* made unto his Auncestors of a stream lyeth, and VVrit shall be, *Command that he render her gorse*; and in his Count he shall alledge the Explees in taking of Fythes.

I And so he shall have a VVrit of *Entre in te quibus* upon the disseisin of a passage, *quod vide* H. 8. E 3.

K And if the disseisor, or feoffe the King, who enfeoffeth another in Fee, the disseisee shall have a VVrit of *Quibus* upon that disseisin against the Kings Feoffee in the Post, &c. 11. E. 3. 7. 23. E. 3. Fitz. entre 11. [192]

A And if Tenant in tail bring a VVrit of *Quibus* upon a disseisin made to himself, he may count that he was seised in his demesn as of freehold, without shewing any particular estate, or how the estate began, or he may count upon the special matter and shew the gift in tail, *quod vide* P. 33. H. 6. 1 Ma. Dyer 101.

B And a man may have a VVrit of *Entre* of *quibus*, upon a disseisin of a common, *that he render pasture for ten oxen, &c. quod vide.* P. 4. E 4.

And

And a man shall not have a Writ of *Entre* in the post, where he may have it within the degrees, in the *per*, or in the *per & cui*.

14 H.4.10. Auckford 24.E.3.70.

If a man disseise the father of a marsh, and maketh the same meadow, and the father dieth, the son and heir shall have a writ of *de quibus* upon a disseisin, made to his father of that meadow, and by the writ he shall demand the lands, by the name of a meadow, and not by the name of a marsh. D

Yet no precipe will ly of a marsh because properly it cannot be rendred. 13 E.3.Br. demand.23.39

And so if it be land covered with water, and he is disseised thereof, and the disseisor make it meadow, the disseisee shall have a writ of *quibus*, and by his writ demand the meadow, and suppose that he was disseised of meadow the writ, &c. b H.6.8. ve.

And so if a man be disseised of land, and he build a house upon the same, he shall suppose the disseisin to be of a house, &c. Quære of this.

39. H.6.8. he shall have a precipe by the name of a house.

And the writ of *quibus* upon disseisin of an office is such

The King to the Sheriff, &c. Command H. Abbot of the E *Borough of St. Peter, that justly, &c. he render B. the office of serjeanty, in the Abby of the Borough of St. Peter, and the rent of twenty four loaves, fourty flagons of ale, and six messes, with the appurtenances in the town of the Borough of St. Peter, which he claimeth to be his right, and inheritance, and of which the same Abbot injustly, and without judgement, distress, &c.*

And he who cometh in unto any land by record, or by F election, or by succession, or by disseisin, the writ shall be brought against such person alwaies in the Post.

Writ of Dum fuit infra ætatem.

A Writ of *Dum fuit infra ætatem* lyeth, where an En- G fant maketh a Feoffment in fee of his lands, or for life, or a gift in tail, when he cometh of full age, he may have that writ to recover those lands or tenements, which were so alienes by him, &c. And within age he may en-

39. H.6.42. ter into the land and take it back again, and by his entry, he shall be remitted to his Auncestours right; but yet he shall not maintain that writ, untill he be of full age of 21. years, for the words of the writ do so suppose; *Dum*

fuit

fuit infra ætatem, by which it appeareth that he is not within age at the time of the writ, &c. and also the writ is such; *qui plenæ ætatis est, ut dicit*, by which it appeareth that he ought to be of full age, when that he bringeth that Writ; and the Writ is such.

In 46. E. 3: 34. A *Dum fuit infra ætatem* was admitted of a rent, and yet by some the gift is void; but the delivery of the deed is not void.

H *The King to the Sheriff*; *Command A. that, &c. render B. who of full age is as he saith two messuages, &c. which the same B. to him demised, to him within age as he saith, and unless he shall do it, &c. and so in the Per into which the same A. hath not entred but by C. to whom the foresaid B. those demised. And in the Post thus, unto which, &c. unless after the demise which the foresaid B. while within age he was thereof made to W. as he saith, and whereof he plaineth, and unless, &c. but that clause who of full age is*, shall not be put in the Writs of *per, cui*, or *post*, but onely in the first writ, by grant made by the Demandant to the Tenant.

I And if a man bring this writ upon the Alienation of his Ancestors, then this clause; *qui plenæ ætatis est*, shall not be in the writ, and yet the Enfant shall have *Dum fuit infra ætatem* of a seisin; and Alienation of his Ancestor during his non-age, And the Writ shall be such.

Command A. that &c. render B. one messuage with the appurtenances which he claimeth to be his right, &c. and in which the same A. hath not entred but by C. father or other Auncestors of the aforesaid B. whose heir he is, who that to him demised while within age he was: Or thus, which he claimeth, &c. and into which, &c. but by C. to whom D. grandmother of the foresaid B. whose, &c. while the same D. &c. and in the Post which he claimeth, &c. and into which, &c. after the demise which D. Aunt or Cousin of the aforesaid B. whose heir he is, while the same D. &c. thereof made to H. as he saith, and whereof he plaineth, &c.

34. H. 6. 31: Davers ac. 19. H. 6. 45. *ac. de cui in vita.*

K And if two Infants be joyn-tenants, and they alien the land during their non-age, at their full age they ought not to sue forth several VVrits of *Dum fuit infra ætatem*, because their non-age is the cause of the action which is several, for the non-age of the one, is not the non-age of the other, nor the alienation of the one, the alienation of the other.

And if the husband and wife alien the wives lands, during

ring the non-age of the husband and wife, the wife at her full age after the death of the husband, ſhall have *Dum fuit infra ætatem* for ſuch alienation, M. 14. E. 3.

But if the husband were of full age, and the wife within age, and they both alien the wives lands, and then the husband dyeth, it is a queſtion whether the wife ſhall have a *Dum fuit infra ætatem*, and I conceive that ſhe ſhall have a *Dum fuit infra ætatem*, or a *Cui in vita* as ſhe pleaſeth, for when they join in a Feoffment of the land, it ſhall be ſaid the Feoffment of the wife untill ſhe do diſagree, for if the husband and wife make a guift in tail, or a leaſe for life of the wives lands rendring rent, if the husband dyeth, the reverſion is onely the wife, and ſhe may accept the rent, and the ſame ſhall binde her and her heirs; and then if ſhe will not accept the Rent, but becauſe ſhe was within age at the time of the Feſt, ſhe will bring a *Dum fuit infra etatem*, it ſeemeth ſhe ſhall not be received ſo to do, for by that ſuit ſhe affirmeth that ſhe made the Feoffment, and then it ſhall not be ſaid the Feoffment of the husband onely, but the Feoffment of the wife alone after the death of the husband, if ſhe affirm that to be her Feoſment; and by the *Dum fuit infra etatem*, ſhe
[193] doth affirm the ſame, and that ſhe made the Feoffment during the coverture; and on the other ſide it may be ſaid, That ſhe doth not firm the ſame to be a lawfull Feoffment made by her. And alſo by the Feoffment of the husband, the entre of the wife ſhall be taken away; but by the Feoffment of the wife during her non-age, his entre ſhall not be taken away; and therefore Quære the law, &c.

Writ of Cui in Vita.

A THe Writ of *Cui in vita* lieth where the Husband doth alien in Fee, the Right or Inheritance of his Wife, or the Freehold of his Wife by Feoffment, or grant for life, or in tail; then after the death of the Husband, the Wife ſhall have *Cui in vita contradicere non potuit*: And the Writ lieth where the Wife hath an eſtate for life, or in tail, and the Husband alieneth that eſtate and title of the wives, then the Wife after his death ſhall have that Writ.

B And if the wife do not bring the Writ, during her life, then if ſhe had an Eſtate in Fee-ſimple, her Heir ſhall have a Writ which is called *Sur cui in vita*, after her death. And if the wife have an Eſtate in Tail, and her Husband alien, and make a Feoffment of that Eſtate; then if the wife dieth, her heir ſhall have a Writ of *Formedon* in the Diſcender to recover that Eſtate, and not a Writ of *Sur cui in vita*; for thoſe Writs of *Cui in vita*, and *Sur cui in vita*, are Writs founded upon the Common Law, and of an Eſtate in Fee-ſimple; for there was not other Eſtate at the Common Law which could diſcend but a Fee ſimple: For if the Lord by the Common Law giveth Lands to hold of him, if the Tenant dieth without heir, he ſhall have a Writ of Eſcheat. 19 H. 6. 3 Prife. V. 8.

And ſo by the Common Law, If a man give Lands to one and the heirs of his Body, *&c.* if he dieth without heir of his body, the Lord by the Common Law ſhall have a *Formedon* in the Reverſion of that Eſtate, for want of iſſue of him to whom the gift was made; but yet the Donor ſhall have an Eſtate in Fee-ſimple, as I think, and that appeareth by the Statute, which ſaith, *De tenementis quæ multotiens dantur ſub conditione*; by which words it appeareth, That the Gift had a Condition implied therein; ſo that it ſhall revert for want of ſuch iſſue, and by reaſon of the Tenure reſerved, *&c.* But it doth not appear by the Statute, that he ſhall have an Eſtate Tail of other nature then the Eſtate which was by the Common Law, and the form of the Writ of *Cui in vita*, is ſuch.

A Feme-ſole made a Deed of Feoffment, but always after continued ſeiſin of the Land; after ſhe took Husband, who delivered the Land to the party to whom the Deed was made, the Feme may have a *Cui in vita*, becauſe ſhe did not execute the Feoffment by delivery of the Land, 4 E. 2. *Fitz. Cui in vita* 21. Plow. Com. 19. & 263. *Anno* 22 *E.* 4. 3.

C The K. to the Sher. *&c.* Com. *A.* that juſtly, *&c.* he ren.

B. which was the wife of *D.* one Meſ. with the appurt. in *N.* which ſhe claimeth to be her right and inher. and into which the ſame *A.* hath not entred, but by the foreſaid *D.* ſometime husband of her *B.* who that to him demiſed; whom ſhe in his life time could not contradict, as ſhe ſaith.

And if ſhe hold in Frankmarriage, and the husband alien, D then the Writ ſhall be, which ſhe claimeth to be her right to marry, and into which the ſame *A. &c.* but by *C.* to whom the foreſaid *D.* ſometime the husband of her *B.* that as before. And this Writ of *Cui in vita* may be in the *Per, cui & poſt*, and in the Poſt the Writ ſhall be, and into which the ſame *A.* hath not Entry, but after the demiſe which the foreſaid *D.* ſometimes the husband of her *B.* whom ſhe in his life time, *&c.* could not thereof made, as ſhe ſaith, and whereof ſhe plaineth, *&c.* and but, *&c.* Or thus, which ſhe claimeth to be her right of the gift of *I.* who her *B.* enfeoffed, and into which, *&c.*

11 Aſſ. 11. Br. Aſſ. 167. 26 H 7. 8, 9. 48 E. 3. 8. 39 H. 6. 38, *&c.* And if the husband and wife purchaſe joyntly, and the E husband, alieneth all in fee and dieth, The wife ſhall have a Writ in this form, which ſhe claimeth to be her right of the gift of *I.* who her *B.* and the foreſaid *C.* ſometime her husband, thereof enfeoffed, and into which, *&c.*

And if ſhe hath an eſtate to her and the heirs of her F body, and of the body of her husband begotten, then the Writ is, *Which ſhe claimeth to hold to her and the heirs of her body, and of the body of the foreſaid* D. *ſometime her husband, iſſuing, of the demiſe of* I. Or thus, *Which he claimeth to be his right of the demiſe which* I. *thereof, made to the ſame* B. *and foreſaid* D. *ſometime her husband, and to the heirs of her* B. And there the husband ſhall have a joynt eſtate with the wife for the term of her life.

Note the Statute of *Weſt.* 2. *c.* 3. extends to give this account, as well for Recovery before the Statute, as after 5 E. 2. *Cui in vita* 23. 2 E. 4. 3. And if the wife claim the Lands in Dower, then the G Writ ſhall be, *Which ſhe claimeth to be her dower of the gift of* D. *her firſt husband, or her ſecond husband, and into which, &c. but by the foreſaid* C. *ſecond husband of her* B. *or third husband who that to him demiſed, &c. And if ſhe hold for term of life of dimiſſion, then the Writ ſhall be, Which ſhe claimeth to hold for her life of the demiſe, which* I. *thereof made to her* B. *and the foreſaid* D. *ſometime her husband for the life of the ſame* B. *&* D.

And if the husband and wife loſe by default the wives H Lands, after the death of the husband, ſhe ſhall have a *Cui in vita* for to recover thoſe Lands ſo loſt by default; but if a man

man recover by a *Ceſſavit* Lands of the wife by default of the husband and the wife, upon a Seſſer, during the marriage had betwixt them; if the husband dieth, the wife ſhall not have a *Cui in vita* upon that recovery, *Quod vi. Tri.* 4 E. 2. Note the Caſe of *Weſt*, 9 E 4. 16.

I If the husband and wife, and a third perſon purchaſe joyntly, and the husband alieneth all in fee, and dieth, the wife as it ſeemeth ſhall have a *Cui in vita* of a moyety, being the third Joyntenant; but it ſeemeth ſuch alienation is a ſeverance of the joynture, *Quod vi. Paſche*, 16 E. 3. *Cui in vita* in the Abridgment, and if the husband alien the K Corody in fee, which the wife hath, it ſhall not be any diſcontinuance, but the wife may demand her Corody. 9 E. 4. 16. If the husband and wife loſe by default in Waſte, no *Cui in vita*; the reaſon is becauſe Land is in demand in *&c.* Writ.

A If the husband and wife exchange the Land of the wife for other Lands, if the wife agree unto the exchange after B the husbands death, ſhe ſhall not have a *Cui in vita*. And if the wife do accept of parcel of the Land in Dower, of which ſhe hath a *Cui in vita*, by that acceptance ſhe ſhall be barred in her *Cui in vita* of the reſidue. 36 E. 3. She ſhall have a *Cui in vita* of no part during the others life. 36 E. 3. She ſhall have a *Cui in vita* 30. that is of a purchaſe during the Coverture, that ſhe ſhall not have a *Cui in vita* after the death of the other; but for, *&c.* may he. 2 E. 2. *Cui in vita* 19, 8 E. 2. *ibid* 35, 8 E. 2. *Cui in vita* 28. The husband gave the Land of the wife to *I.* who gave other Land to the husband and wife, and to her ſon of the husband, and to the heirs of him who ſurvived; and that was pleaded by Exchange in Bar in a *Cui in vita*, and holden no Bar. 20 E. 3. *Cui in vita* 10. So if ſhe accept a rent where ſhe and her husband make a Feoffment, 21 H 6. 24.

If husband and wife be Joyntenants before the coverture, and the husband alieneth all the Land and dieth, ſhe ſhall have a *Cui in vita*, but for a moyety; but if they be Joynt purchaſors, during the Coverture, and alien all the Land and dieth, his wife ſhall have a *Cui in vita* of the whole Land, becauſe that during the Coverture as to purchaſe, they are but one perſon in Law. And the Writ of *Sur cui in vita* lieth for the heir of the wife, where the husband alieneth all the Land in Fee, and the Writ is ſuch. 19 H. 6. 45

C *Command A. that, &c. he render B. one Meſſuage with the appurtenances in* N. *which he claims to be his right and inheritance, and in which, &c. but by* C. *ſometimes the husband of* D. *Mother of the foreſaid* B. *whoſe heir he is, who that to him demiſed, whom ſhe* D. *in her life, could not contradict, as he ſaith, and unleſs, &c. And in the per & cui, thus, Which he claims, &c. and into which, &c: but by* C. *to whom* D. *ſometime husband*

band of B. *Mother, Aunt, Siſter or Coſin of the foreſaid* B. *whoſe heir &c. that to him demiſed, whom ſhe* D. *in her life, &c. And in the Poſt the Writ ſhall be thus. But after the demiſe which* I. *ſometime the husband of* C. *Mother of the foreſaid* B. *and Aunt of the foreſaid* M. *whoſe heirs they are, whom ſhe* C. *in her life could not contradict, thereof made as they ſay, and whereof he plaineth, &c. and unleſs, &c.*

And by that Writ appeareth, that the Aunt and the Neece may joyn in a Writ of *Sur cui in vita*, upon an alienation made by the husband, their Common Anceſtor; or upon a Recovery had againſt the husband and wife, who was the Common Anceſtor to them, if the ſecond husband alien the Lands of the wife, and he and his wife die, the iſſue of the wife and the firſt husband ſhall have a *Sur cui in vita* againſt the Alienee; although the ſecond husband be living, if he were not intitled to be Tenant by the curteſie; but if the ſecond husband be intitled to be Tenant by the curteſie, then the iſſue of the firſt husband ſhall not have a *Sur cui in vita* during the life of the ſecond husband. D E

8 E. 2. *Cui in vita* 26. 44 E. 1. *Fitz.* ib. 30.

And a *Sur cui in vita* was maintainable of a Rent. *Mich.* 5 E 3. 37. 12 E 3. And in a *Cui in vita*, the Grant or Gift alledged in the Writ, is not traverſable. F G

Cui in vita 13. 49 E. 3. 29. *Quere.* But 50 E 3. 6. 5 E. 2. *Cui in vita* 25.

If a man giveth Lands to a woman to marry her, and they married, and afterwards the husband alieneth the Lands and dieth, the wife ſhall have a *Cui in vita* of thoſe Lands given her by her husband. H

Writ de ſine aſſenſu Capitali.

THe Writ of *Sine aſſenſu Capitali* lieth where a Dean, Biſhop, Prebendary, Abbot, Prior, or Maſter of an Hoſpital, alien the Lands which they have in the right of their Houſe, Abbey, or Priory, without the aſſent of their Covent, or their Chapter, or Brethren, *&c.* He who is the Succeſſor ſhall have that Writ, which is ſuch, and may be in the *Per, cui* or *poſt*. I

The King to the Sheriff, &c. Command A. *that, &c. he render* B. *Biſhop of* S. *one Meſſuage with the appurtenances in* N. *which he claimeth to be the right of the Church of him, the Biſhop of* S *Maſter of* S. *and into which the ſame* A. *hath not entred but by* H. *to whom* R. *ſometime Biſhop of* S. *Predeceſſor of the foreſaid* K

ſaid now Biſhop that demiſed, without the aſſent and will of his Chapter, as he ſaith, &c.

And for a Maſter of an Hoſpital, the Writ ſhall be.

The King to the Sheriff, &c. Command A. that juſtly, &c. he render B. Warden of the Hoſpital of St. Mary Magdalen *of* Lincoln, *one Meſſuage which he claimeth to be the right of his Hoſpital aboveſaid, and into which the ſame A. hath not entred, but by D. ſometimes Warden of the Hoſpital foreſaid, who that to him demiſed without the aſſent and will of the Brothers and Siſters of the ſame Hoſpital, as he ſaith, and unleſs, &c.*

And for a Prebend, the form of the Writ is ſuch.

The King to the Sheriff, &c. That he render B. Prebendary of the Prebend of D. in the Church of Bleſſed Peter of York, *one Meſſuage, &c. in A. which he claimeth to be the right of his Prebend, and into which, &c. But after the demiſe which R. of B. late Prebendary of the Prebend of the foreſaid Predeceſſor of the Prebend foreſaid, without the licence and will of the Archbiſhop of* York, *the Dean and Chapter of the Church foreſaid thereof made to W. of R. as he ſaith, and whereof he plaineth, &c.*

And for the Prior of St. *John of Jeruſalem* in *England*: Lieth a Writ upon an Alienation of his Predeceſſor, thus.

That he render to B. Prior of the Hoſpital of St. John *of* Jeruſalem *in* England, *&c. which he claimeth to be the right of his Church, of St.* John *of* Jeruſalem *in* England, *and into which he hath not, &c. but by W. ſometime Prior of St.* John, *&c. Predeceſſor of the foreſaid now Prior, who that to him demiſed without the aſſent of his Chapter, as he ſaith, &c. and unleſs, &c.* And the Proces in theſe Writs are Summons; *Grand Cape*, and *Petit Cape*.

L And hereby it appeareth, that a Prebendary ſhall have a Writ *De ſine aſſenſu Capitali*; by which it ſeemeth, that he hath a Feeſimple in the Prebend, and yet one Prebendary may enter upon the alienation of his Predeceſſor; as Parſon ſhall do upon the alienation of his Predeceſſor.

And alſo a Prebendary ſhall have a *Juris utrum* upon an alienation of his Predeceſſor, by which it ſeemeth he hath not a greater Eſtate then as Parſon; but yet it ſeems reaſonable that he have this Writ, *De ſine aſſenſu Capitali*; becauſe that he, the Biſhop, and the Chapter are but one body, and are as one body, although the poſſeſſions be ſevered and divided amongſt them; and every one of them is enabled to bring an action of his own poſſeſſion in his own name. [195]

And a man may have a Writ of *Sine aſſenſu Capitali* againſt A
the ſame perſon by ſeveral Precipes, in the Writ of Lands
in the ſeveral Towns, and upon demiſes of his ſeveral Pre-
deceſſors, and it ſhall be good. *Quod vi. H.* 33 *E.* 2.

And if the Prebendary, or a Biſhop, or Abbot, be diſſei- B
ſed, and afterward he releaſeth to the diſſeiſor; it ſeemeth
the ſame is an alienation upon which he may have a Writ
De fine aſſenſu Capitali; for if the diſſeiſor die ſeiſed after the
Releaſe made, the Succeſſor hath not any remedy, but by
this Writ, or by a Writ of Right: But if the Diſſeiſor doth
not die ſeiſed, then it ſeemeth the Succeſſor may enter up-
on the Diſſeiſor, notwithſtanding the Releaſe of his Pre-
deceſſor, for by the Releaſe no more paſſeth, then he may
rightfully releaſe, *&c.*

Writ of Aſſiſe of Mortdanceſtor.

THe Writ of *Mortdanceſtor* lieth where my Father or Mo- C
ther, Brother or Siſter, or Uncle or Aunt, or Nephew,
or Neece, dieth ſeiſed of any Lands, Tenements or Rents,
or of a Corody or other Rents; as Hens or Capons iſſu-
ing out of other Lands of an Eſtate in Feeſimple: Now if a
ſtranger, after their deaths, abate in that Land, Rent or Pro-
fit, I who am his heir ſhall have this Writ of Aſſiſe of *Mort-
danceſtor*.

And if the Anceſtor were ſeiſed, the day that he died, D
of any Lands or Rents, or other like things of an Eſtate in
Fee-ſimple, although that a ſtranger entereth and diſſeiſ-
eth him of that Land or Tenements the day that he dieth,
ſo that he dieth not ſeiſed of the ſaid Land or Rents, *&c.*
Yet I who am his heir ſhall have that Aſſiſe of *Mortdanceſtor*,
becauſe the Writ doth not ſuppoſe that any Anceſtor died
ſeiſed, but the Writ ſaith: *Ready upon oath to recogn' if W.
Father, &c. was ſeiſed in his demean, as of Fee the day he died*;
and the ſame is ſufficient, although he dieth not ſeiſed, and
the form of the Writ is ſuch.

The King to the Sheriff of S. Greeting. If A. ſhall, &c. then E
*ſummon, &c. twelve free and legal men, of the Venew of N. that
they be before our Juſtice at the firſt Aſſiſe, when into thoſe parts
they ſhall come, or before our Juſtice at* Weſtminſter *in the
Octaves, &c. or before our beloved and truſty D. and E. and thoſe
whom to them we ſhall aſſociate, at a certain day and place, which*

the

the same D. *and* E. *shall cause thee to know: Ready upon oath to recognise, if* W. *Father of the foresaid* A. *or Mother, Sister, Brother, Uncle or Aunt, was seised in Fee of demean as of Messuage, and one yard Land, with the appurtenances in* D. *the day which he died, and if he died after Coronation of the Lord* Henry *King; and if the same* A. *his next heir be, and in the mean time the foresaid Messuages, Let them view, and their name to be imbreviated cause thou, and summon by good summons* B. *who the foresaid Messuage and Lands now holdeth, that he be there to hear that Recognisance, and have there the Summons, and this Writ. Witness, &c.* 10 E. 2. *Formedon* 55. *Plow. Com.* 239. if a man hath issue a Son, and his Wife dieth, and he taketh another Wife, and hath issue a Son,

and Lands are given to him, and his second Wife in Special Tail before the Statute of *Donis*, if a stranger had abated, no *Mortdancestor* lieth.

¶ And upon that Writ he needs not have any Special Patent, for the General Patent made to the Justices, shall serve for that Writ; and if the Writ be, *That they be before our beloved and trusty* D. *and* E. *and those whom we shall to them associate*, then they use to have a Special Patent directed to the same Justices, *&c.* But if the Justices be the Justices of Assise in the same County, then their General Patent shall serve for that Assise as well as if they had a Special Patent. And the Special Patent is such.

The King to his beloved and trusty D. *and* E. *Greeting. Know ye that we have constituted you our Justice, together with those which to you we shall associate, the Assise of Mortdancestor to take which* A. *hath arraigned before you by our Writ, of one Messuage, and one yard Land in* N. *and therefore, &c.* As in the Patent of Assise of Novel disseisin.

¶ And a man may have an Assise of Mortdancestor of several Rents, against several persons in several Counties, and in the end of the Writ shall be several Summons against the Tenants, and the form of the Writ is such. 32 Ass. 24. Br. Attaint 72. 50 Ass. 4. Br. Attaint 84.

The King to the Sheriff, &c. if A. *and* B. *shall, &c. then summon twelve Free, &c. ready upon oath to recognise, if* W. *Father of the foresaid* A. *and Grandfather of the foresaid* B. *was seised, &c. of ten shillings rent, with the appurtenances in* N. *and if he died, &c. and if* A. *and* B. *are the next, &c. that Tenant whence that rent cometh; let them view, and their name, &c. and summon by good summons* S. *who six shillings of rent thereof deforceth them, and* T. *who four shillings of rent thereof deforceth them, that then they be, &c.*

And by this Writ it appeareth, That the Aunt and the Neece shall joyn in Assise of Mortdancestor, and that is by the Statute of *Gloucester, cap.* 6.

And if the heir who bringeth Assise, be within age, he shall not finde Pledges; and therefore the form of the Writ shall be of another Form, and shall not say;

If A. shall, &c. But thus, *Summon, &c. twelve free and legal men, &c. If W. the Father of the foresaid A. who within age is, as is said was seised, &c.* And shall not say in the Writ, *If he died after the Coronation, &c.* because it appeareth by the age of the Demandant; but if many sisters be Demandants, and some of them be within age, and some of full age, then the Writ shall be in the common Form, as if all were of full age.

[196] If a man go beyond the Sea in a pilgrimage, and dieth there, his heir shall have a Writ of Mortdancestor of another Form, thus.

The King to the Sheriff, &c. If A *shall, &c. then summon twelve, &c. If* W. *Father of the foresaid* A. *was seised in his demean &c. of the rent of one Clove, with the appurtenances in* N. *the day which his pilgrimage he took toward the holy Land, or toward* Jerusalem, *or toward St.* James, *in which journey he died, as is said; and if he took that journey after the Coronation, &c.* And in that Writ it sufficeth, if he were seised the day he went out of the Land, and took Sea, although it was not the day of his death. And if the Father enter into Religion, and be professed, the Son shall have a Mortdancestor, if the stranger abate in the Land, the Writ shall be, *Si W. pater, &c. die quo habitum Religionis assumsit in quo habitu professus fuit, ut dicitur, Et si habitum illud assumsit post coronationem, &c.* If a man have a Corody to him and his heirs, if he die seised, or was seised thereof the day of his death, his heir shall have an Assise of Mortdancestor thereof, if it be taken from him; and the Writ shall be.

The King to the Sheriff &c. If W *shall, &c. then summon, &c. twelve free, &c. of the Venew of the City of* Westminster, *who may be, &c. ready, &c. If* L. *Mother of the foresaid* W. *was seised in her demean as of fee, of forty shillings rent, and of the rent of sixty two Loaves, three flagons of Wine, twenty flagons of Ale, and thirty Messes, with the appurtenances in the City of* Westminster, *the day which she died, and if she died, &c. and if the same* W, *&c. and in the mean time the Tenant whence that*

rent

rent issueth: *Let them then view and sum', &c.* T. *Abbot of* Westminster, *and the Frier* R. *of* B. *and Frier* K. *of* S. *Commoigne of the same Abbot, who desorce him of the Rent fore', that then &c.*

C And the order to set the parcels in the Writ, shall be as in a Writ of Right.

D And a man shall have a Certificate upon this Writ, and also Writs of Association, and *Si non omnes*, as he shall have in Assise of Novel disseisin.

E And by the Statute of *Gloucester*, If Tenant by the Curtesie alien his Wives Inheritance, and dieth, the Heir of the Wife shall have an Assise of Mortdancestor, if he have not Assets by discent by the Tenant by the Curtesie, and the same shall be as well where the Wife was not seised of the Land the day of her death, as where she was seised thereof, for that Writ is given by the Statute.

F If the Lord have the Ward of the Heir of his Tenant, and when he cometh of full Age, the Guardian will not suffer him to enter into the Land, the Heir shall have an Assise of Mortdancestor against the Guardian, by the Statute of *Marlbridge, cap.* 16.

G And the Proces in Mortdancestor, is Summons agrinst the party, and if he make default at the day of the Assise return, then the Plaintiff ought to sue a Resummons, and if he make default again, the Assise shal be taken by his default. 8 Ass. 23. Br. Default and Appearance 81.

And if a man vouch in an Assise of Mortdancestor, and at the first day the vouchee made default, then a resummons shall issue forth against him; and so if the Tenant or vouchee at the first day be essoyn'd, and afterwards at the day given by the Essoyn, the Tenant or Vouchee make default, a resummons shall be avoided. But if the Tenant at first day be essoyned, as in the Kings service, and afterwards make default at another day, the Assise shall be taken by his default,

H *&c.* And if the Writ of Mortdancestor be brought by several Summons against several Tenants, then the Assise may be taken once against one Tenant, and another against the other Tenant. *Quod vi.* 3 *E.* 3. *Itin. North.*

And a Mortdancestor doth not lie for Lands devisable by will, because title may fall to another who is not heir, by the will of the Ancestor, *&c.* and yet the Writ is true, that he was seised the day he died. *Quod vi.* 23 *E.* 3. *lib. Ass.*

And if a man be seised in Tail, the Remainder to his right heirs, and afterwards he dieth seised without issue of

of his body, and a ſtranger abateth, it is a queſtion if the heir ſhall have an Aſſiſe of *Mortdanceſtor*, and *A.* 21 *E.* 3. *Itin. Suff. M.* 5 *H.* 4. The opinion of ſome is, That if the Remainder be to his right heirs, that then he ſhall not have an Aſſiſe of *Mortdanceſtor*; but if a Gift in tail be made unto one, the Remainder to him and his right heirs, that then he ſhall have an Aſſiſe of *Mortdanceſtor*, becauſe he hath the Remainder in Fee to him and his heirs: But it ſeemeth he ſhall not have an Aſſiſe of *Mortdanceſtor* in the one Caſe, nor in the other; for the words of the Writ are *Si. W. Pater, &c. fuit ſeiſitus die quo obiit in dominico ſuo ut de feodo*, and that he was not, for he was ſeiſed in demeſn *ut de feodo latbato*, and not in demeſn as of Fee; and therefore the Jury cannot finde, that he was ſeiſed in his demeſn as of Fee, for of the demeſn he was ſeiſed in tail. *Quære* of that.

If the Anceſtor dieth ſeiſed and hath two Siſters his heirs, one of them ſhall not have an Aſſiſe of Mortdanceſtor againſt the other, for this Writ lieth againſt ſtrangers, and not againſt parties in blood. L

And ſo in Gavelkind, one Brother ſhall not have a Mortdanceſtor againſt the other for the privity of blood, but he ought for to ſue a *Nuper obiit* againſt his Brother, or one ſiſter againſt the other, *&c.*

And *H.* 13 *H.* 3. *Itin. Suff.* the yongeſt Brother had a *Mortdanceſtor* againſt a ſtranger, and ſhall recover where the eldeſt went beyond Sea, although he were not dead; becauſe eighteen years paſſed ſince the eldeſt went beyond the Seas.

And *A.* 13 *E.* 2. it was adjudged accordingly, where the yonger Brother recorded in Aſſiſe of *Mortdanceſtor*, where the eldeſt went beyond the Sea, and was alive.

Writ of Nuper Obiit.

[197] THe Writ of *Nuper Obiit* lieth where the Grandfather, Father, Brother, Uncle, or other Anceſtors of the Demandant dieth ſeiſed of Lands, Tenements or Rents of an Eſtate in Feeſimple, and after their death, one of the heirs of the ſame Anceſtor doth enter and deforceth the demandants; now he or thoſe who are ſo diſſeiſed ſhall have that Writ againſt their Coparcenor; and that Writ A lieth

lieth for one Coheir against the others, or for divers Coheirs against many as the case is, and it ought to be where the Common Ancestor dieth seised of Land, &c. of an estate in Fee simple; for if one sister do deforce another sister of Land, whereof their Ancestor died seised of an Estate in Tail, her sister shall have a Formedon against the sister who deforced her, &c. and not a *Nuper Obiit*. And the form of the Writ is such.

B *The King to the Sheriff, &c. If* A. *and* B. *shall, &c. then summon, &c.* C. *that she be before our Justice at Westminster such day, &c. to shew why she deforced from* H. *and* B. *their reasonable part to them contingent of the inheritance, which was of* W. *of* N. *Father, Mother, or other Ancestor of the same* A. B. *and* C. *whose heirs they are, and who lately died, as is said, &c. and have there the Summon and this Writ. Witness, &c.*

And the Writ may be brought by the Aunt against her Sister, and her Neece; and then the Writ shall be such.

The King to the Sheriff, &c. If A. *and* B. *his wife shall, &c. then summon, &c.* C. *and* D. *that they be, &c. to shew why they deforced from the foresaid* A. *and* B. *the reasonable part of them* A. *and* B. *which to her is contingent of the inheritance which was of* E. *in* N. *Mother of the foresaid* B. *and* C. *and great Grand mother of the foresaid* C. *whose heirs they are, and which lately died, as is said, and have, &c.*

C And that Writ lieth betwixt Coheirs in Gavelkind, as well as between women who are Coparcenors; and if one Coparcenor be deforced by another Coparcenor, and a stranger, she shall have a *Nuper obiit* against her Coparcenor, and by the rule in the Register, that Joynture shall not abate the Writ. *Br. Entry Congeable* 122. Collects, that the stranger gain nothing of the freehold by that Entry. *Quod nota.* 7 H. 6. 8.

D And also by the rule in the Register, in a *Nuper obiit*, Nontenure of parcel of the thing demanded, shall not abate the Writ.

E And if two of the Coparcenors enter after the death of their Ancestor and deforce the third Sister, and afterwards they make partition betwixt them, and then one of the two alieneth her part unto a stranger in Fee, yet the third shall have a *Nuper obiit* against her two sisters notwithstanding that alienation, and shall recover the third part thereof, whereof the Coparcenor who aliened not, was seised, &c.

And

And for to recover the third part of the other Coparcenor, which is in the hand of the ſtranger, ſhe ought to ſue an Aſſiſe of Mortdanceſtor in her name, and in the name of her other Coparcenors, *&c.* Or a Writ of *Aiel*, as the caſe is.

6 H. 7. 1. *per Kebl'c.* By the Diſclaimer the Demandant is put to his Aſſize of Mortdanceſtor alſo he is barred of his damages in the *Nuper obiit.*

And if one Coparcenor do Infeoff a ſtranger in Fee, and taketh back an eſtate to him in Fee, or for life, yet it ſeems a *Nuper obiit* lies againſt him by the other Coparcenor, if he do not diſclaim in the blood. *M.* 2 *E.* 2. and it ſeems reaſonable. But *M.* 21 *E.* 3. and *M* 45 *E.* 3. 7 *H.* 6. 8. it is holden the contrary; but ſeveral Tenancy or non-tenure, is no good plea in a *Nuper obiit*, for the privity of blood; but if he claim by purchaſe, or diſclaim in the blood, it is a good plea.

And a *Nuper Obiit* lieth betwixt ſiſters of the half blood.

And if a *Nuper obiit* be brought of the ſeiſin of the Grandfather, Darrein Seiſin in the Father is no plea, without alledging a dying ſeiſed in the Father, *&c.*

A *Nuper Obiit* lieth of the ſeiſin of the great Grandfather.

And the *Nuper obiit* ought to be brought by that Coparcenor who is deforced, *&c.* againſt all the other Coparcenors, although that ſome of them have nothing in the Tenancy, *&c.*

And it appeareth, *T.* 4 *E.* 2. That the *Nuper obiit* lieth of the ſeiſin of his Father, if the Father were ſeiſed the day that he died, or the day before, for that amounteth to a dying ſeiſed, *&c.*

And if one ſiſter hath iſſue a Son, and dieth, and the Son doth Infeoff a Woman in Fee of all the Land, and afterwards marries her: The *Nuper obiit* doth not lie by the other Coparcenor againſt the Husband and Wife, but there he may bring a Mortdanceſtor in his own name, and in the name of the husband againſt the husband and wife. 18 *E* 2. *Cui Kanc.*

A Villain and his wife ſhall not have a *Nuper obiit* againſt his wifes Coparcenor, becauſe he is not enfranchiſed, by the marriage of one of the Coparcenors which was one of his Lords, to whom he was Villain before.

And if the Father give Lands in Frankmarriage to his ſiſter, and dieth ſeiſed in Fee of other Lands, ſhe ſhall not

not have a *Nuper obiit* against her ſiſter for the Lands in Fee-ſimple, unleſs ſhe will put the Lands which were given in marriage in Horchpot, *&c.*

P A *Nuper obiit* lieth of a Corody.

Q And Vouchers, and the View do not lie in *Nuper obiit:*

R And the Aunt and the Neece ſhall joyn in a *Nuper obiit* againſt the other Siſter, or Neece, *&c.*

Writ of quare ejecit infra terminum.

S THe Writ *Quare ejecit infra terminum* lieth where a man ſeiſeth Lands unto another for years, and after he entreth and maketh a Feoffment in Fee of the ſame Lands to a ſtranger, or for life; the Leſſee ſhall have that Writ *Quare ejecit infra terminum* againſt the Feoffee, or Leſſee for life.

T And in that Writ he ſhall recover his Term again, and his damages alſo if the Term be not ended, and if the Term be ended, he ſhall recover all in damages. 11 H. 6. 6. If the term expire pendant the Writ, yet the Writ ſhall not abate.

U And the Proces in that Writ is Summons, Attachment and Diſtreſs *infinit*, and not Proces of Outlawry, becauſe the Writ is not *Vi & armis*; and the ſerve of the Writ appeareth after, *&c.*

A But this Writ of *Quare ejecit infra terminum*, was deviſed, as it is ſaid, by a wiſe man called *William Merton*, and for this cauſe. For if a man leaſe Lands for years, and after he ouſte his Leſſee, and after he hath put him out, he make a Feoffment of the Land unto a ſtranger in Fee; now the Leſſee cannot have a Writ of *Ejectione firmæ* againſt him who is the Feoffee, becauſe he did not put him out; for which in that caſe the Leſſee had no other remedy, but to enter again into the Land. And if the Feoffee do then put him out, the Leſſee may have againſt him an *Ejectione firmæ vi & armis* for the wrong done him, and before Entry made by the Leſſee, he had not remedy againſt the Feoffee. And therefore by the Equity of the Statute of *Weſt.* c. 24. *As often as hereafter it ſhall happen in the Chancery, that in one caſe a Writ is found, and in the like caſe falling under the ſame Law, and wanting the ſame remedy, &c. Let the Clerks of Chancery agree, &c.* And by reaſon of that Statute was this Writ deviſed; but yet if the Leſſor put out the Leſſee, and preſently maketh a Feoffment in Fee, ſo as the Feoffee [198]

be

be party or privy to the ouster of the Lessee, then the Lessee shall have a Writ of *Ejectione firmæ vi & armis* against the Feoffee, because he is party to the ouster, and to the wrong done unto him; and the Writ followeth.

The King to the Sheriff, &c. If A. shall, &c. then summon, B
&c. B. *that he be &c. to shew why he deforced the foresaid* A: *of one Messuage with the appurtenances in* N. *which* C. *demised to him for a term not yet past; within which term the same* C. *to the foresaid* B. *that Messuage sold: By occasion of which sale, the same* B. *the same* A. *outed of the Messuage foresaid, or is said, and have, &c.*

And the like Writ lieth where the son and heir of the C
Lessor maketh a Feoffment, &c. and the Feoffee ousted the Lessee.

And if the Lessee granteth over his term, and afterwards D
the Lessor maketh a Feoffment of the Land unto a stranger in Fee. Now the second Lessee shall have that Writ, *&c.* and the Writ shall be.

Why he deforced B. *of one Messuage, &c. which* R *as whom* L. *that demised for a term not yet past to the same* B. *demised for the same term, within which term the same* L. *of the Messuage, &c.*

And so if four let a house to *A.* for years, who granteth over his estate to *B.* and afterwards two of the Lessors die, and the Survivor maketh a Feoffment unto *C.* in Fee, *B.* shall have a *Quare ejecit infra terminum* against the said Feoffee, and the Writ shall recite the special matter.

And if a man do Lease Land for years, and the Lessor E
doth suffer a Recovery to be against him upon a feigned title, who entreth, yet it seems the Lessee shal have this writ of *Quare ejecit infra terminum, &c.* And the words of the Writ are, *Occasione cujus venditionis*, and yet the same is not properly a sale, but those words are but of Form. But before the Statute of 21 *H.* 8. 15. it seemeth, That the Tenant for years could not have falsified the Recovery had against his Lessor.

35 H. 8. 53, &c. 36 H. 8 63. 10 H. 8. fol 74. 5 H. 7. 7. 37. 11 H. 6. 7 Babington.

And if a man Lease Lands for term of years, and after- F
wards dieth without heir, and the Lord by Escheat enter, and puts out the Termor; it is a doubt whether he shall have a *Quare ejecit infra terminum* against the Lord by Escheat; but it seemeth reasonable that he should have it.

And so if the Villain leaseth Lands for years, and after G
the Lord of the Villain enter, and puts out the Termor, the Lessee

H Leſſee ſhall have that Writ. And ſo if a man Leaſe Lands for years, and afterwards a ſtranger put out the Leſſee, and diſſeiſeth the Leſſor, and afterwards the Leſſor releaſeth unto him, it ſeemeth the Leſſee ſhall have the Writ, *Quare ejecit infra terminum* againſt the Diſſeiſor, *&c.*

I And *Quare ejecit infra terminum* lieth as well againſt the Leſſor, as againſt his Feoffee. *Quod vide H. 19 H. 6.*

K And it ſeemeth that the ſale ſuppoſed in the Writ, is not traverſable, but onely the ejectment, *&c.* And if ſo, then it ſeemeth the Writ lieth againſt the Lord by Eſchear, or againſt the Lord of the Villain who putteth out the Termor, *&c.*

But an *Ejectione firme* lieth againſt the Lord of the Villain, if he put the term out of his Leaſe made by his Villain, before Entry made by the Lord into the Land; and ſo an *Ejectione firme* lieth againſt the Lord by Eſchear, if he ouſte the Termor of the Leaſe made by the Tenant, *&c.*

And for the Book of 19 *H. 6.* it appeareth, That is in the election of the Leſſee, to ſue a Writ of *Ejectione firme*, or a Writ of *Quare ejecit infra terminum* againſt the Leſſor or his heir, or againſt the Lord by Eſchear, or againſt the Lord of the Villain, if they put the Termor out of his Term, *&c.*

Writ of Ex gravi quarela.

L THe Writ of Ex *gravi Quarela* lieth where a man is ſeiſed of any Lands or Tenements in any City or Borough, or in Gavelkind; which Lands are deviſeable by Will, time out of minde, *&c.* Now if one who hath Lands or Tenements there, doth deviſe thoſe Lands or Tenements unto another in Feeſimple, or in Feetail, he to whom the Deviſe is made, ſhall have this Writ of *Ex gravi Quarela*, for to execute that Deviſe,

Note, that if a Town hath paid fifteen, it is no ancient Town that may Deviſe, 40 Aſſ. 41. 39 Aſſ.

Br. Aſſiſe 355. This Writ is not incident to Lands deviſable. *Quare*, If a Deviſe of a Rent out of Land deviſable, be within the benefit of this writ. 26 H. 8. &c. or 4 & 5 Ma. Dyer 140.

M And if a man do Deviſe ſuch Lands or Tenements unto one in Tail, the Remainder over in Fee unto a ſtranger, if the Tenant in Tail enter and be ſeiſed by force of the Intail, and afterwards dieth without iſſue, he in the Remainder, ſhall have ſuch Writ of *Ex gravi Quarela* to execute that Deviſe.

And

[199] And ſo if a man deviſe Lands or Tenements unto one in A Tail, and afterwards the Tenant in Tail dieth without iſſue of his body; the heir of the Donor, or he who hath the Reverſion of the Land ſhall have the Writ *De ex gravi Querela* in the Nature of a Formedon in the Revertor, to recontinue the poſſeſſion of the Land to him who hath the Reverſion. And firſt for Land deviſed in Tail within the City of *London*; the form of the Writ for the heirs of the Deviſee in Tail, is ſuch.

The King to the Major and Sheriff of the City of London. B *Greeting. From the grievous p'aint of* I. *daughter of* E. *and* M. *ſiſter of the ſame* I. *we have received; that whereas according to cuſtom in the ſame City hitherto obtained and approved, any Citizen of the ſame City, may his Tenants in the ſame City, in his Teſtament, in his laſt Will, at his Chattels, deviſe to whom-*
40 Aſſ. 41. Br. Caſtrum 38. *ſoever he will; and* S. *ſometime Citizen of the City aforeſaid, in his Teſtament, in his laſt Will four ſhops with the appurtenances in the ſame City being, or four Meſſuages and ten ſhops, with the appurtenances, &c. to* E. *to have to him, and the heirs of his body iſſuing had deviſed, to* R. *and* S. *his wife two Meſſuages, and three ſhops thereof to* F. *and three ſhops thereof to the foreſaid* I. *and* M. *daughters and heirs of the ſame* E. *&c. deforced, lies*
Locus imperfectus, See the next Writ. *juſtly to the loſs and no ſmall grievenance of them* I. *and* M. *and againſt the will of the Teſtator aforeſaid, and againſt the cuſtom aforeſaid; and becauſe we will not the ſame* I. *and* M. *be injured in this part, we command you, that calling before you the parties foreſaid, and hearing ſeverally their reaſons; and looking into the Tenor of the Teſtament foreſaid, full and ſpeedy juſtice to the ſame* I. *and* M. *thereupon you cauſe to be done, as of right, and according to cuſtom foreſaid, ſhall be to be done, and hitherto in the like caſe there hath uſed to be done; or to the ſame* I. *and* M. *in this plaint cauſe to be done, due and ſpeedy compliſhment of juſtice, or, &c. Witneſs, &c.*

And it appeareth by that Writ, That the *K.* command- C eth them to do according to the cuſtom of the City, or to do juſtice to the parties, by which it ſeemeth, that the Major upon that Writ ſhall award Proces to ſummon the party who is Tenant of the Land, to appear at a certain day, to anſwer to the Plaintiff in the nature of a Summons in a *Precipe quod reddat*; and when he cometh the Plaintiff ought to ſhew the Teſtament, and to count upon the ſame, and to alledge ſeiſin of the Land in the Teſtator,

and

D and how that he deviſed the ſame to him. And that the Defendant then plead thereunto, or the Major and Sheriffs ought to proceed therein according to the uſage of the E City. And that Writ may be ſued againſt ſeveral Tenants, and then the Major ought to make ſeveral precepts unto every Tenant; and if the Land be in another Borough, then the Writ ſhall be ſuch.

The King to his Bailiffs of the Town of Yarmouth. *Greeting. Of the grievous plaint, &c. as above, which according to cuſtom in the Town foreſaid hitherto, &c. our Burgeſs of the ſame Town may his Tenements which he hath purchaſed for himſelf in the ſame Town, in his Teſtament in his laſt Will, as above. And* N. *Burgeſs of the ſame Town, one Meſſuage with the appurtenances which he purchaſed for himſelf in the ſame Town in his Teſtament in his laſt Will to* W. *and his heirs had deviſed* R. *of* E. *the Meſſuage foreſaid, after the death of the foreſaid* N. *having entred that from the foreſaid* W. *Deforce les juſtly, to. &c. of him* W, *&c. as above, and becauſe we will not, &c. as above.*

F And if a man deviſeth his Lands to his wife for life, the remainder over to another in fee, and the Tenant for life entreth, and is ſeiſed by force of the deviſe and dieth, and he in the remainder is deforced, he ſhall have ſuch Writ.

Of the great plaint, &c. to their Will, and M. *ſometime Citizen of the ſame City to* D. *his wife in his Teſtament in his laſt Will four ſhops with the appurtenances in* L. *which he purchaſed for himſelf in the ſame City, for the life of her* D. *to have had deviſed. So that after the deceaſe of the ſame* D. *the foreſaid ſhops, with the appurtenances to the foreſaid* E. *and his heirs, ſhould remain to* N. *who theſe ſhops holdeth of the demiſe of the foreſaid* D. *thoſe from the foreſaid* E. *after the death of the ſame* D. *Deforce les juſtly, to the loſs of him* E, *&c.*

G And if a man do deviſe Lands by his Teſtament in Tail, the Remainder over in tail unto another, and the firſt Tenant in tail entreth, and dieth without iſſue; and the ſecond Tenant in tail entreth in his remainder and dieth without iſſue, the heir of the Donor ſhall have the Writ of *Ex gravi querela* in this form:

Of the grievous plaint, &c. as above, and I. P. *ſometime Citizen of the City foreſaid, Father of the foreſaid* S. *whoſe heir he is, one Meſſuage with the appurtenances in the Suburbs of* London, *to* M. *ſon of him* I. *and the heirs of his body lawfully*

to be begotten, to have had deviſed, ſo that if the ſame M. *without heir of his body lawfully begotten, ſhould die, the foreſaid Meſſuage, &c. to* R. *ſon of the foreſaid* I. *and the heirs of the body of the foreſaid* R. *lawfully begotten, ſhould remain,* L. *Chapl. of the Chant. at the Altar of St.* Joh. *in the new work in the Church of St.* Paul *of* London, *for the ſoul of Mr.* W. *ſometime Canon of the ſame Church, ordained the foreſaid Meſſuage with the appurtenances after the death of the foreſaid* M. *and* R. *from the foreſaid* S. *to whom the ſame Meſſuage with the appurtenances ought to revert, becauſe both* M. *and* R. *died without heirs of their bodies lawfully begotten, as is ſaid* Deforce les *juſtly to the loſs of him* S. *&c.*

And it appeareth by the ſubſequent Writ, That when a Man doth make a deviſe of his Lands in *London*, and alſo of his goods, and makes Executors *&c.* then firſt the Executors ſhall prove the ſame before the Ordinary; and then after they ſhall bring the ſame before the Major into *London, &c.* and it ſhall be there enrolled; and then upon that enrollment the Major upon a Writ of *Ex gravi querela* ſued for the Lands, ſhall do execution, and ſuch Proces as upon a fine of Lands, *&c.* And the Writ is ſuch.

[200] *The King to the Major and Sheriff of* London. *Greeting. Whereas we have received, according to the cuſtom in the ſame City, Letters obtained and approved Teſtaments in which Lay Tenements in the foreſaid City deviſed were, probate firſt made of the ſame Teſtaments before the Ordinary for the goods and chattels in the ſame deviſed, before you in our Huſting of* London *to be approved and enrolled ought, to the making execution of the Tenements ſo deviſed, and now of the Relation of* R. *Coſin of* I. P. *lately Citizen of* London, *we have received, that although the foreſaid* I. *one ſhop and two cellars with the appurtenances in the Pariſh of St.* Michael, London, *in the ſame City in his Teſtament in his laſt Will to the foreſaid* R. *had deviſed, to have and to hold to him and his heirs for ever, and the ſame Teſtament, as the manner is, before the Ordinary is proved; yet* E. *which was the wife of* I. *of* P. *and* A. *Executor of the Teſtament of the ſame* I. *that Teſtament with them detain, not permitting it in the Huſting foreſaid to been rolled, as foreſaid is, to the manifeſt peril of diſ-heriſon of him* R. *and againſt the cuſtom foreſaid. We not willing the ſame* R. *to be injured in this part, command you, that*

that calling before you the foreſaid Executors, and hearing as well the reaſons of the foreſaid R. *as of the foreſaid Executors. Further in the premiſſes, you do what of right, &c. and according to the cuſtom of the City foreſaid is to be done, and hitherto in like caſe there hath accuſtomed to be done.*

And by that Writ appeareth, That if a man have Lands deviſed unto him in *London* by Will, that he ſhall have a Writ unto the Major, to compel the Executors to bring in the ſame to be proved before them in *London*, and enrolled in the Huſtings.

A And if a man have Lands deviſed unto him in *Oxford*, the cuſtom is, That the Teſtament ſhall be proved there before the Ordinary, and afterwards it ſhall be proved before the Major of *Oxford &c.* And if the Major will not prove the Will, then he to whom the deviſe is made; and alſo the Executors who took any advantage of Adminiſtration by that Will, ſhall have a Writ out of the Chancery, directed unto the Major and Bailiffs, commanding them to prove the Will, and thereupon they ſhall have an *Alias & à Pluries, vel cauſam nobis ſignifices, &c.* And afterwards an Attachment againſt them, if need be, retornable in the Kings Bench, or Common Pleas.

And by the ſame reaſon he ſhall have the like Writ againſt the Major of *London*, to prove ſuch Will, and to inrol the ſame, and upon that an *Alias & à Pluries* againſt the Major of *London*, and Attachment if need be.

And by the ſame reaſon it ſeemeth reaſonable, that a man ſhall have a Writ directed to the Ordinary to prove the Will of any man, *&c.* And the form of the Writ is ſuch.

The King to his Major and Bailiffs of the City of Oxford: *Greeting. The plaint of* T. *and* M. *his wife we have received, containing, That whereas according to the cuſtom of the Town foreſaid uſed, and hitherto approved, the Teſtaments in the Burgeſſes of the Town foreſaid there deceaſing, upon Lands, and Tenements, if they there be deviſed, firſt before the Ordinary, and ſecondly, before you in the Court of the City foreſaid, ought to be proved, and have uſed for the times by-paſt, and the Executors of the Teſtament of* N. *with the foreſaid* T. *and* M. *after the Teſtament of the foreſaid* N. *before the Ordinaries of the City foreſaid,*

ſaid, as the manner is, was proved frequently and again before you that offered to be proved according to the cuſtom foreſaid, by occaſion of certain Tenements in the Suburbs of the ſame City; which the foreſaid N. in his laſt Will to the ſame M. *deviſed, as in the Teſtament foreſaid, more fully is contained; yet you that probate hitherto have refuſed to receive, and as yet refuſe leſs juſtly; by which neither the foreſaid Executors, nor the foreſaid* T. *and* M. *upon the Tenements aforeſaid, or other Tenements by the foreſaid* N. *deviſed, can get adminiſtration, to the retardation of the execution of the Teſtament foreſaid, and againſt the will of the foreſaid* N. *as alſo the damage of* T. *and* M. *and no ſmall damage and grievance of the Executors foreſaid. We therefore not willing the Executors and* T. *and* M. *to be injuried in this plaint, command you, as at other times we have commanded you, That if ſo it be, then to the foreſaid Executors, and to* T. *and* M. *full and ſpeedy juſtice in this plaint you cauſe to be done, as of right, and according to cuſtom foreſaid, in ſuch caſe ſhall be to be done; ſo that no plaint again thereupon come to us, or the cauſe ſignifie ye, why our commands, &c. Witneſs, &c.*

And it is reaſonable that it be ſo done in every other City, where Lands be deviſable by Will, and are deviſed by Will, That the Executors and the Deviſees ſhall have ſuch actions againſt the Ordinary, and alſo againſt the Bailiffs of the Towns and Burroughs to prove ſuch Wills.

And in place of a Formedon in the Deſcender in Tenements deviſed, is ſuch Writ,

And A. *ſometime Citizen, &c. to* M. *his daughter a certain Meſſuage, &c. to have to her and the heirs of her body iſſuing, had deviſed* T. *that Meſſuage foreſaid, having entrance, that after the death of the foreſaid* M. *and* W. *ſon and heir to the ſame* M. *foreſaid, from* I. *brother and heir of the foreſaid* W. *deforced les juſtly to, &c. of him, &c.*

And it ſeemeth, That when the tail is once executed before of the deviſe in the Tenant in Tail, or in the Tenant for term of life, that then he in the Remainder, or the heir of Tenant in tail, have a Formedon in the Diſcender by the courſe of the Common Law after the Statute

Statute of *Weſt.* 2. according to the common form upon a gift made in Tail by Deed. [201]

C And there is another form of Writ in the Regiſter in nature of a Formedon in the Deſcendor.

A And if a man in *London* deviſe Land unto a woman for term of her life, and afterwards to her Executors to ſell, and to convert the money to her own uſe, by the cuſtom of *London* that Teſtament ought to be proved before the Ordinary, and afterwards before the Major, *&c.* and to be B enrolled, *&c.* If the Teſtament be proved before the Ordinary, and afterwards one Executor doth detain the ſame, and will not prove it before the Major, *&c.* the other Executor ſhall have a ſpecial Writ directed unto the Major and Sheriffs of *London*, commanding them to call the Executors before them, and to ſee the Teſtament, *&c.* and to do right according to the cuſtom of the City, and according to the Law, *&c.* which Writ appeareth in the Regiſter.

C And if a man doth deviſe Lands to his wife for the term of her life upon condition, That if ſhe marry, that the Lands ſhall remain unto his Son in tail; and for default of ſuch iſſue, the remainder to the right heirs of the Donor in Fee. Now if the wife taketh a husband who occupieth the Lands, and he in the remainder dieth without heir of his body; the right heir of the Donor ſhall have a ſpecial Writ of *Ex gravi querela* directed unto the Major and Sheriffs of *London*, reciting that ſpecial Deviſe, and the matter as it is, commanding them to call the parties, and to hear them, and to do right, *&c.* And by that it appeareth, That he in the Remainder ſhall have advantage of the condition if it be broken; but the ſame ſhall be by way of action, and not by Entry; for the Condition not performed with Writ, appeareth in the Regiſter.

2 & 3 Ma. Dyer 127.

V. Perkins 864. That he in the Remainder ſhall not take benefit of the Condition by way of Entry.

Writ of Entre ad terminum qui præteriit.

D A Writ of *Entre ad terminum qui præteriit* lieth where a man leaſeth Lands or Tenements for term of life, or years, and afterwards the term expireth, and he to whom the Leaſe was made, or a ſtranger, entreth upon the Lands, and occupieth the ſame, and deforceth the Leſſor, the Leſſor or his heirs ſhall have the Writ.

21 E. 3. *Brief* 308. One brought this Writ upon a Leaſe by his Treicule.

And that Writ lieth in the *Per cui & poſt*; For if the Leſſee hold over his term, and afterwards maketh a feoffment, the Leſſor or his heirs may have that Writ againſt the Feoffee in the *per*, and if the Feoffor maketh a feoffment over, he may have it againſt the ſecond Feoffee in the *per* and *cui*, and againſt the third Feoffee in the *poſt*; and the form of the Writ is ſuch. E

The King to the Sheriff, &c. Command A. *that he render to* B. *one gor. &c. into which the ſame* A. *hath not entry, but by* C. *to whom the foreſaid* B. *that demiſed for a term which is paſt, &c. and unleſs he ſhall do it, &c. and the foreſaid* B. *ſhall ſecure thee, &c.*

And in the Poſt the Writ is, *And into which the ſame* A. *hath not Entry, but after the demiſe, which the ſame* B. *thereof made to* D. *for the term which is paſt, and which after that term to the foreſaid* B. *ought to revert, and whereof he plaineth that* B. *deforceth him, and unleſs, &c.*

And by thoſe words *Unde queritur*, in any Writ of Entry in the *Per* and *cui*, but onely in a Writ of Entry in the *Poſt*.

But if a man will bring a Writ of Entry, *Ad terminum qui præteriit* of his father, mother, or other anceſtor, then there behoveth to be in the Writ theſe words, *Quod clamat eſſe jus & hæreditatem ſuam*; and the form of the Writ is ſuch.

The King to the Sheriff, &c. Command A. *that, &c. he render* B *one Meſſuage, with the appurtenances in* N *which he claimeth to be his right and inheritance, and into which* A. *hath not entry but by* D. *his father or mother, or other anceſtors of the foreſaid* B. *whoſe heir he is, who that to him demiſed for a term which is paſt, as he ſaith, and unleſs he ſhall do it, &c.*

And in the *per* and *cui*, thus. *which he claimeth, &c. and into which, &c. but by* C. *to whom* D. *father, or other anceſtor of the foreſaid* B. *whoſe heir he is, that demiſed for the term which is paſt, &c.*

And in the *poſt* thus, *But after the demiſe which* R. *Grandfather of the foreſaid* B. *and* C. *whoſe heirs they are, &c.* Or thus, *which* C. *father of the foreſaid* B. *and Grandfather of the foreſaid* S. *whoſe heirs they are, thereof made to* H. *for that term which is paſt, and which after that term to the foreſaid, &c. ought to revert as they ſay, and whereof they plaint that the foreſaid* A. *from them deſerced, and unleſs, &c.*

And

F And in every Writ of Entry which a man demandeth of the poſſeſſion of his anceſtor, he ought to have theſe words in the Writ, *Which he claimeth to be his right and inheritance*, &c. But of his own poſſeſſion he ſhall not have thoſe words in the Writ, but onely in a *Cui in vita*, brought by a woman of her inheritance aliened by her husband, for there ſhe ſhall have in her Writ theſe words, *Quod clamat eſſe jus & hæreditatem ſuam, &c.* But the ſame is where the woman claimeth an eſtate in fee-ſimple by the Writ, for if ſhe claim but an eſtate in tail, or a freehold by her *Cui in vita*, then the Writ of *Cui in vita* ſhall make ſpecial mention of that eſtate, *&c.*

G If a man Leaſe a Manor for life or years, unto which an Advowſon is appendant, and afterwards the Leſſee doth make a feoffment of the Manor in fee, and taketh back an eſtate of the Manor, except the Advowſon, to him for life, If the Leſſor bring Writ of Entry, *Ad terminum qui præteriit*, of the Manor againſt the Leſſee, and doth not make exception of the Advowſon; the writ ſhall abate for non-tenure of the Advowſon upon the matter ſhewed, as appeareth by the Regiſter. V. *Thoel. mal* 131, 132, 228. 8 E. 3. Entre 4. V. 14 H. 8. 10. *Brook.*

H The Aunt and the Neece ſhall joyn in this writ of *Ad terminum qui præteriit*, as appeareth by a writ before mentioned.

I And if a man maketh a feoffment in fee upon condition, that if he pay a certain ſum of money at a certain day to the feoffee or his heirs, that then he ſhall have his Land again, and that he may enter, if he pay the money at the day, and afterwards the feoffee will not ſuffer him for to enter: The feoffor ſhall have the writ of *Ad terminum qui præteriit*, becauſe that when he payeth the money, the other hath no term in effect; and if he ſhould not have this writ, he could not have any remedy but to enter, *&c.* and thereupon to have an Aſſiſe. [202]

And *M.* 5 *E* 3. It was adjudged that the Plaintiff ſhould recover in ſuch action upon ſuch matter pleaded and ſhewed; but I do not perceive how the ſame could be maintained by reaſon, becauſe the feeſimple is not properly ſaid a term, for then the Lord by Eſcheat ſhould have a writ of *Ad terminum qui præteriit*, if his Tenant dieth without heir, where he cannot have a writ of eſcheat; and *In terminum qui præteriit*, the Leaſe alledged in the Court is traverſable.

Vide 50 E. 3. 27.

If the husband and wife leaſe the wives Lands for years, A and the husband dieth, and the Termor holdeth over his term, the wife ſhall have a Writ of *Ad terminum qui præteriit* if ſhe will, &c. but ſhe ought for to count that ſhe and her husband leaſed the Land, &c.

And it appeareth in 8 *E. 2. Itin. Kanc.* that the Grantee B in Reverſion ſhall have a Writ of *Ad terminum qui præteriit* againſt the Leſſee, or his heir, or aſſignee, and yet there is no ſuch Writ in the Regiſter.

Writ of Dum non fuit compos mentis.

THe Writ of *Dum non fuit compos mentis* lieth where a C man, who is not of *ſane memorie*, alieneth his Lands or Tenements in Feeſimple, or in Fee-tail, for life, or for years, if he be afterwards deforced by his Alienee or Leſſee, then he himſelf ſhall have this Writ againſt his Alienee or Leſſee, notwithſtanding his own alienation, or his own Leaſe; and the ſame appeareth by Writs in the Regiſter, which are of ſuch form.

The King to the Sheriff, &c. Command A. that he render B. one Meſſuage and twenty acres of Land with the appurtenances which the ſame B. to him demiſed, whilſt he was of unſound memory, as he ſaith, and unleſs, &c. Or thus, *Into which the ſame A. hath not entred, but by C. to whom the foreſaid B. that demiſed, while he was of unſound memory &c.* Or thus in the poſt, *into which the ſame A. hath not entred, but after the demiſe which the foreſaid B. while he was of unſound memory thereof made to D. and whereof he plaineth, &c.*

Littl. 95. 39 H. 6. 52. 35 H. 6. 15. 5 E. 2. of an Obligation.

And ſome have ſaid, that Writ lieth not by him who ali- D eneth the Land, becauſe he ſhall not diſable himſelf, nor contradict his own Deed; but that ſeemeth to be little reaſon, for this is an infirmity which cometh by the act of God, and it ſtandeth with reaſon, that a man ſhould ſhew how he was viſited by the act of God with infirmity, by which he loſt his memory and diſcretion for a time; as if an Infant within the age of twenty one years doth make a Feoffment in Fee, or a Leaſe for years, he himſelf ſhall avoid his Feoffment or Leaſe, as well within age, as of full age, although he ſhall not have a *Dum fuit infra ætatem* within age, becauſe the Writ doth ſuppoſe him to be of

full

full age, but an Infant of the age of fourteen years hath diſcretion adjudged within at ſuch age; and if he at ſuch age commit fellony, he ſhall be hanged for the ſame, and yet his Feoffment, Leaſe, or Grant, ſhall not binde him before the age of twenty one years; becauſe he hath not perfect diſcretion or knowledge what he ought to do, or what is to his profit, or diſadvantage before ſuch age; and therefore he ſhall alledge that he was within age at the time of the Feoffment, Grant, or Leaſe, made by him; by which it appeareth, that he ſhall alledge, that he had not perfect diſcretion at that time, for that nonage is an infirmity of nature, and cometh by the Act of God; and *à fortiori*, then he who is of *non ſane memorie* ſhall alledge that he was not of *Sane memorie* at the time of his Feoffment or Grant; for he who is of unſound memory, hath nor any manner of diſcretion; for if he kill a man, it ſhall not be felony, nor murder, nor he ſhall not forfeit his Lands or Goods for the ſame, becauſe it appeareth that he hath not diſcretion; for if he had diſcretion, he ſhould be hanged for the ſame; as an Infant who is of the age of diſcretion, who committeth murther or fellony ſhall be hanged for the ſame. Litt. 95. contr. Plow: Com. 19. a.

And it appeareth in *Britton*, that in debt upon a Bond, the Defendant ſaid, that he was not of *Sane memorie* at the time of making the Bond, and holden it was a good Plea. 5 E. 2. Con. 24. contr.

E And if an Ideot doth Releaſe all his right by Deed; yet if it be afterwards found by Office, that he is an Ideot, the King ſhall ſeiſe the Land, and that releaſe ſhall not binde, *&c.* *Quod vide* in title *Scire facias*, *Peſche*, 32 *E.* 3. in the Abridgments. *Stanford.* Prog. 34.

But in the Book of Aſſiſes. 35 *E.* 3. The Tenant in an Aſſiſe pleaded the Releaſe of the Plaintiff, and the Plaintiff ſaid, that he was not then of *Sane memorie*, *&c.* And there the opinion of two Juſtices, was, that he ſhould not have that plea; but I do not much regard their opinion, for the reaſons aforeſaid. *Dum non compos mentis* was brought for the alienation by a Sot, and admitted. 18 E. 3. *Scire facias* 10. 12 E. 4. 8. 39 H. 6. 42.

And it appeareth in 7 *H.* 4. 5. That a Feoffment of an Ideot made by Letter of Attorney is void; and ſo it ſeemeth to be of a man of *Non ſane memorie*.

F And if a man of *Non ſane memorie* alieneth his Land in Fee, and dieth, his heir ſhall have ſuch Writ, as may enter

as

as his anceſtors might have entred, as well as if an Infant within age had alienated his Lands, *&c.*

[203] And in 25 E. 3. in the Book of Aſſiſes, a man of *non ſane* A *memorie*, made a feoffment in fee, and took back an eſtate to himſelf for life, and there it was agreed and admitted, that the ſame was a Remitter; and thereupon iſſue was taken, that he was of perfect memory, *&c.* and that was found by verdict; which ſee in title of Feoffments in the Abridgments.

And the Writ for the heir upon the alienation of his B Anceſtors ſhall be in ſuch form.

The King to the Sheriff &c. Command A. *that, &c. he render* B. *twenty acres of Land, with the appurtenances in* N. *which he claims to be his right and inheritance, and into which the ſame* A. *hath not entred but by* C. *or other Anceſtor of the foreſaid* B. *whoſe heir he is, who thoſe to him demiſed while the ſaid* C. *was of unſound memory, as he ſaith, &c.*

And thus in the *Per & cui*, *which he claims, &c. and into which &c. but by* C. *to whom* D. *Grandfather of the ſame* B. *or other Anceſtor of the foreſaid* B. *whoſe heir he is, thoſe demiſed, while the ſame* D. *was of unſound memory*: Or thus in the *Poſt*, *Which he claims, &c. and into which, &c. but after the demiſe which* C. *great Grandfather or other Anceſtor of the foreſaid* B. *whoſe heir he is, while the ſame* C. *&c. thereof to* H. *made as he ſaith; and whereof he plaineth, &c.*

And 14 *Anno* of the King, was ſuch writ granted, *Com-* C *mand* R. *that, &c. he render to* B. *one rent of* I. *three loaves, ſeven flagons of ale, and ſeven meſſes by the week with the appurtenances in* C. *and which the ſame* B. *to him demiſed, while he was of unſound memory, as he ſaith, and unleſs, &c.* And the Proces in D *Grand Cape*, and *Petit Cape*, as in other *Præcipe quod reddat.*

Writ of Entruſion.

THe Writ of Entruſion lieth where Tenant for life, or E in dower, or by the curteſie, dieth ſeiſed of ſuch eſtate for life, and after their death a ſtranger doth intrude upon the Land, he in the Reverſion ſhall have that Writ againſt the entruder, and the Writ ſhall be ſuch.

The King to the Sheriff, &c. Com. A. *that juſtly, &c. be render to* F B. *one carve of Land with the appurtenances in* N *which he claimeth to be his right and inherit. and into which the ſame* A. *hath not*

Entry

Entry but by intruſion, which into that he made after the death of C. *which was the wife of* D. *who that held in dower of the gift of the foreſaid* D. *ſometime his father, or the brother of the foreſaid* B. *whoſe heir he is, as he ſaith, and unleſs, &c.*

And in the *per*, thus. *And into which the ſame* A. *hath not Entry but by* C. *who that to him demiſed after the death of* D. *which was the wife of* E. *which that held in dower of the gift of the foreſaid* E. *ſometime her husband.*

And in the *per* and *cui*, thus. *And into which the ſame* A. *hath not entry but by* C. *to whom* D. *that demiſed, who himſelf into that intruded after the death, &c.*

And in the *Poſt* the Writ is thus, *Into which the ſame* A. *hath not Entry, but after the intruſion which* C. *into that made after the death of* D. *which was the wife of* E. *which that held in dower of the gift of the foreſaid* E. *ſometime her husband, brother of the foreſaid* B. *whoſe heir he is, and which after the death of the foreſaid* D *to the foreſaid* B. *ought to revert as he ſaith, and whereof he plaineth, &c. and unleſs, &c.*

And ſo that word, *Et unde queritur* was put in every Writ of Entry in the *Poſt*.

G And if a woman recover dower againſt him in the Reverſion, or againſt his heir, and afterwards ſhe dieth ſeiſed of that eſtate, and a ſtranger doth intrude into the Land, then he in the Reverſion ſhall have a Writ of Intruſion, and in the Writ mention ſhall be made of the recovery thus.

Into which A. *hath not entred but by the intruſion which into that he made after the death of* C. *which was the wife of* D. *who that in our Court before our Juſtice at* W. *by our Writ, by conſideration of the ſame Court recovered, as her dower which was to her contingent of the Franktenement which was of the foreſaid* D. *ſometime her husband, in the ſame Town againſt the foreſaid* B. Or thus, *againſt* W. *father or other anceſtor of the foreſaid* B. *whoſe heir he is, as he ſaith, and unleſs, &c.*

And ſo ſhe ſhall have another Writ of another form, where ſhe recovereth her dower againſt the heir of her husband, and after the heir granteth the Reverſion unto the ſaid B. and then the Tenant in Dower dieth ſeiſed, and a ſtranger abateth, the ſaid B. ſhall have a Writ of Intruſion againſt the ſtranger, and the Writ ſhall rehearſe the whole ſpecial matter, which Writ appeareth in the Regiſter.

H And the Aunt and the Neece ſhall joyn in a Writ of Intruſion; and if the heir doth aſſign dower unto his Mother

M ther, and then commits fellony; for which the Lord claimeth the Reverſion, and granteth the ſame to one in Fee, to whom the Tenant attorneth, and afterwards the Grantee of the Reverſion hath iſſue two daughters, and dieth, and one of them hath iſſue and dieth: Now the Aunt and the Neece ſhall joyn in that Writ, *&c.* and the Writ ſhall be ſuch.

The King to the Sheriff, &c. Command A *that juſtly, &c. he render* B. *and* M. *her ſiſter, and* C. *and* F. *his brother one Meſſuage, &c. into which the ſame* A. *hath not entry, but after the entruſion which* H. *into that made after the death of* I. *which was the wife of* W. *who that held in dower, &c. ſometime her husband of* N. *Father of the foreſaid* B. *and* M. *and Grandfather of the foreſaid* C. *and* F. *whoſe heirs they are, of the aſſignment of* T. *chief Lord of that Fee, of whom the foreſaid* I. *that held in dower by reaſon of fellony by* W. *of* S. *ſon and heir of the foreſaid* W. *done as is ſaid, and that which after the death of the foreſaid* I. *to the foreſaid* B. M. C. *and* F. *ought to revert by form of the aſſignment foreſaid, as they ſay; and whereof they plain, &c.*

[204] And if a man intrude after the death of Tenant by the A curteſie, the Writ of Intruſion ſhall be ſuch.

Command A. *that, &c. he render* B, *&c. which he claim, &c. and into which the ſame* A *hath not entry, but by the intruſion which into that he made, after the death of* D. *who that held by the curteſie of* England, *after the death of* C. *ſometime his wife, Mother or Aunt of the foreſaid* B, *&c. whoſe heir, &c. as he ſaith.*

And in the *Per* thus, *But by* C. *who that to him demiſed, who himſelf into that intruded, &c. as above.*

And in the *Per* and *Cui*, thus. *But by* C *who to* D. *that demiſed, who himſelf into that intruded, &c.*

And in the *Poſt* thus, *But after the intruſion which* W. *into that made after the death of* C. *who that held by the curteſie of* England, *after the death of* D. *ſometime his wife, Mother of the foreſaid* B. *whoſe heir, &c. And which after the death of the foreſaid* C. *to the foreſaid* B. *ought to revert, as he ſaith, and whereof he plaineth, &c. and unleſs, &c.*

And if a man doth intrude after the death of Tenant for B life; then he in the Reverſion ſhall have ſuch Writ of Intruſion.

The King to the Sheriff, &c. Command A, *that juſtly, &c. he render*

render B, *&c.* into which the ſame A. hath not entry but by intruſion, which into that he made after the death of C. to whom the foreſaid B. or to whom D. Father, or other Anceſtor of the foreſaid B. whoſe heir he is, that demiſed for the life of him C. as he ſaith, and unleſs, *&c.* And in the *Per* thus, *Into which the ſame* A, *&c. but by* C. *who that to him demiſed, who himſelf into that intruſion after the death of* W. *to whom the foreſaid* B. or R. *Father or other Anceſtor of the foreſaid* B. *whoſe heir, &c. that demiſed for the life of him* W, *&c.*

And in the *Per* and *Cui* thus, *Into which, &c. but by* C. *to whom* D. *that demiſed, who himſelf into that intruded, &c.*

And in the *Poſt* thus, *But after the intruſion which* D. *into that made after the death of* I. *to whom* B. or other *Anceſtor of the foreſaid* B. *whoſe heir, &c. that demiſed for the life of him* I. *and which after the death of him* I. *to the foreſaid* B. *ought to revert, as he ſaith, and whereof he plaineth, &c.*

C And in the Regiſter there are other forms of Writs, where the Reverſion of Tenant is granted by fine, or otherwiſe, which ſhall be *Ex aſſignatione.*

D And the heir in tail ſhall not have a Writ of Intruſion; if a man do intrude after the death of Tenant in Dower, or of Tenant by the curteſie, or after the death of Tenant for life; he in the Reverſion in tail ſhall not have a Writ of Intruſion, but he ſhall be put to his Writ of Formedon; for that Writ lieth for him who hath the Reverſion in Fee-ſimple, or for term of life, and not for him who hath the Reverſion in tail, or for term of years; for it lieth not, but for him who hath a Freehold, after the death of Tenant for term of life, or of Tenant in Dower, *&c.*

And he in the Remainder ſhall have a Writ of Intruſion, if a man do intrude after the death of Tenant for life, and ſo the Aſſignee of the Aſſignee of the Remainder ſhall have ſuch Writ.

E If Lands be given to two, and to the heirs of one of them, and he who hath the Fee dieth, and then the Tenant for life dieth, the heir of him in Remainder ſhall have ſuch Writ. *Into which but by intruſion which into that he made after the death of* C. *which was the wife of* D. *who that held for her life of the demiſe which* R. *thereof made to the ſame* C. *and the foreſaid* D. *ſometime her husband, and to the heirs of him* D. *Father of the foreſaid* B. *whoſe heir, &c. as he ſaith, and unleſs, &c.* And the Proces in that Writ, is, *Summons, Grand Cape*, and *Petit Cape.*

Writ

Writ Cui ante divortium.

THe Writ of *Cui ante divortium* lieth where the Husband F alieneth the wives Land, which ſhe had in Feeſimple, or in Tail, or for life, unto a ſtranger in Feeſimple, in Feetail, or for life, and afterwards the husband and wife are divorced, then the wife ſhall have that Writ againſt the Alinee, and the form of the Writ ſhall be ſuch,

The King to the Sheriff, &c. Command A. that juſtly, &c. he G *render* B. *which was the wife of* D. *one Meſſuage with the appurtenances in* N. *which ſhe claims to be her right and inheritance; and into which, &c. but by the foreſaid* D. *ſometimes the husband of her* B. *who that to him demiſed, whom ſhe before the divorce betwixt them had, could not contradict.*

And that Writ lieth in the *Per, cui & poſt*, as doth the H other Writ of *Cui in vita.*

And if the husband do alien unto an Abbot in fee, and I afterwards the husband dieth, the wife ſhall have a Writ of *Cui ante divortium* in the Poſt againſt the Succeſſor of the Abbot, and the form of the Writ ſhall be thus.

Into which the ſame Abbot hath not entered, but after the demiſe which the foreſaid D. *ſometimes the husband of her* B. *whom ſhe before the divorce could not contradict, thereof made to* L. *ſometime Abbot of* B. *as ſhe ſaith, and whereof ſhe plaineth, &c. and ſhall not ſay in this Writ, Predeceſſors of the foreſaid Abbot, nor in any cauſe where a Religious is Tenant.*

And the heir ſhall have a *Sur cui ante divortium*, where K the wife dieth before the action brought, as well as he ſhall have a *Sur cui in vita*; but of an Eſtate Tail, the heir ſhall not have a *Sur cui in vita ante divortium*, but ſhall be put to his Formedon in the Diſcendor.

And the Aunt and the Neece ſhall joyn in that Writ, as L they ſhall do in a *Sur cui in vita*; and the Proces is Sum- M mons *Grande Cape*, and *Petit Cape.*

Writ

Writ of Cauſa matrimonii prelocuti.

A THe Writ of *Cauſa matrimonii prelocuti* lieth where a woman giveth Lands unto a man in feeſimple, unto the intent that he ſhall marry her, and afterwards he will not marry her within convenient time when he is required by the woman. Then the woman ſhall have that Writ, and the form of the Writ is ſuch. [265]

B *The King to the Sheriff, &c. Command A. that juſtly, &c. he render to B. one Meſſuage, &c. which the ſame B. to him demiſed, becauſe of marriage betwixt them before ſpoken; for which he ought to have taken her to wife, and as yet hath not taken her, as ſhe ſaith, &c.*

And in the *per* and *cui* thus, *Into which, &c. but by* C. *to whom the foreſaid* B. *that demiſed becauſe of marriage, &c. and he hath not taken, as ſhe ſaith, whereof ſhe plaineth, &c.*

C And it ſeemeth that that Writ lieth for the woman, where ſhe giveth Lands to a man for term of his life, for the intent to marry her, as well as where ſhe giveth it in Feeſimple. But if ſhe give it to a man in tail for to marry her, *&c.* although he will not marry her, it ſeemeth ſhe ſhall not have that Writ againſt him, by that means to avoid and defeat the Eſtate tail; for that ſhall be contrary to the Statute of *Donis conditionalibus*. And a man upon a condition in Law ſhall not make void the Statute; for the Statute makes a Law certain by expreſs words of Gift in Tail. And then it is not reaſon that it ſhould be anneinted by intendment, or by a thing averrable, which is not expreſſed, and ſhall be taken contrary to the Statute, and the heir ſhall have that Writ as well as the woman herſelf, and the Writ ſhall be. *Co. 2 part, 74.* *3 & 4 Ma. Dyer 146.*

D *Command A, &c. that he render* B, *&c. which he claimeth, &c. and into which he hath not entred but by* C. *Mother of the ſaid* B. *whoſe heir he is, which that to him demiſed becauſe of marriage, &c. and hath not yet taken, &c. and unleſs, &c.* But if he expreſs an Entre if he marry, then he may alien, but till alienation he ſeiſed *Jure uxoris, 5 E. 2. Br. Cond. 204.*

E And it may be in the *Per, cui & poſt*, as the caſe is.

F And alſo the Aunt and the Neece may joyn in the Writ.

And if a man do give Lands unto a woman, unto the intent to marry him, although that the woman will not marry him, *&c.* he ſhall not have a Writ *Cauſa matrimonii prelocuti* in that caſe, and alſo that the woman do after

after marry him; yet the woman ſhall hold the Land to her and her heirs, *&c.* And if the husband do afterwards alien them, ſhe ſhall have a *Cui in vita* for thoſe Lands.

If a woman do Infeoff a ſtranger by Deed of Land in Fee, to the intent to infeoff her, and one who ſhall be her husband, if the marriage doth not take effect, ſhe ſhall have the Writ of *Cauſa matrimonii prelocuti* againſt the ſtranger, notwithſtanding that the Deed of Feoffment be abſolute; *Quæ vide*, in title Aſſiſe. 34 *E.* 3. *lib. Aſſiſe.* G

14 H. 8. 10. *Bendet.* 24 H. 8. 9. it is a good condition. 40 Aſſ. 17. Condit 17. and Br. Cond 115. A woman did infeoff a man upon condition that he ſhould take her to wife, and he had a wife at the time of the Feoffment, and afterward the woman for not performing of the Condition, entred again into the Land, upon the ſecond Feoffee, and her Entry was adjuged lawful, and the condition good. 40 *E.* 3. *lib. Aſſ.* H

And the husband and wife may ſue that writ of *Cauſa matrimonii prelocuti* againſt another who ought to have married her. I

8 E. 2. Entre 78. ac of a Condition expreſſed. Note 3 & 4 Ma. Dyer 246. one cannot aver a conſideration againſt a conſideration expreſs by Deed. *V.* 14 Eliz. Dyer 311, 312. ac' And if a woman maketh a Feoffment in Fee by Deed, reſerving Rent, then ſhe ſhall not have that Writ of *Cauſa matrimonii prelocuti* for the Rent reſerved, becauſe it is proved that the Reſervation was the cauſe of the Feoffment; but if ſhe hath a Deed to ſhew and prove that the Feoffment was to the intent that he ſhould marry her, then ſhe ſhall maintain her action notwithſtanding the reſervation made of the Rent. K

And a woman may ſue a *Cauſa matrimonii prelocuti* without any writing ſhewed to prove the ſame, where ſhe maketh a Feoffment without Deed to a man in Fee to the intent to marry her, *&c.* and the Proces in Summons, *Grand Cape*, and *Petit Cape*, &c. L

Writ of Entre in caſu proviſo:

THe Writ of *Entre in caſu proviſo* is given by the Statute of *Gloceſter*, *cap.* 7. And that Writ lieth where Tenant in Dower doth alien in fee, for life or in tail, the Land which ſhe holdeth in Dower; he who hath the Reverſion in Fee, or in tail, or for life, ſhall maintain that Writ againſt the Alienee; and againſt him who is the Tenant of the Freehold of the Land during the life of the Tenant in Dower, *&c.* and M

And the Writ may be made in the *per*, *cui* and *poſt*, and the Writ ſhall be ſuch.

The King to the Sheriff, &c. Command A, &c. that he render B. which he claimeth, &c. into which A. &c. but by C. which was the wife of D. who that to him demiſed, who that he held in dower of the gift of the foreſaid D ſometime her husband, father, or other anceſtor of the foreſaid B. whoſe heir, &c. and which after the demiſe by her D. to the foreſaid A. againſt the form of the Statute of Glouceſter of the Common Council of our Realm, thereupon provided, made in fee to the foreſaid B. ought to revert, by the form of the ſame Statute, as he ſaith, and unleſs, &c.

And in the *Per* thus, *into which the ſame A. hath not entred but by C. to whom D. which was the wife of E. that demiſed, who that held in dower, and which after the demiſe, &c.*

And in the *Poſt* thus, *Command A. that, &c. he render B. &c. which he claimeth, &c. and into which, &c. but after the demiſe which C. which was the wife of D. which that held in dower of the gift of the foreſaid D. ſometime her husband, father of the foreſaid B. whoſe heir he is, thereof made to F. and which after the demiſe by her C. &c. to them, ought to revert, by form of the Statute, as ſhe ſaith, and unleſs, &c.*

A And if a woman do recover her dower againſt the heir, and afterward doth alien in fee, the heir ſhall have the Writ of *Caſu proviſo*; and in the Writ he ſhall mention the recovery, as he ſhall do in a Writ of *Entre ad communem legem* upon an alienation made by Tenant in Dower, *&c.* And although the woman alien in Tail, or for life, yet the Writ is always of one form. [206]

B If a man grant the Reverſion of Lands which are holden of his inherit. in dower to another, & the tenant attorneth, and afterwards the Tenant in dower doth alien in fee, the grantee of the reverſion ſhall have ſuch writ *de aſſignatione*:

Command A. that he render B. &c. and into which, &c. but by C. which was the wife of D. ſometime her husband, of the aſſignment which W. ſon and heir of D. thereof made to the foreſaid B. and which after the demiſe, &c.

And if the heir grant the reverſion in fee, and the Tenant attorneth, and afterwards the Grantee granteth the ſame over, and the Tenant doth attorn; and afterwards the Tenant in Dower doth alien in fee, the third Grantee of the reverſion ſhall have ſuch writ *De caſu proviſo.*

The King to the Sheriff, &c. Command A. that, &c. he render B *&c. which he claimeth, &c. and into which, &c. but by or after the demiſe, &c. as the caſe is, which* C. *which was the wife of* D. *which that held in dower of the gift of the foreſaid* D. *ſometimes her husband of the foreſaid* B. *of the aſſignment of* E. *of whom the foreſaid* C. *that held in dower of the aſſignment of* F. *of whom the ſaid* C *that held in dower of the aſſignment which* G. *ſon and heir of the foreſaid* D *thereof made to the foreſaid* F. *and which after the demiſe by her* C. *to the foreſaid* A, *&c. If the Writ be in the Per, and if the Writ be in the Poſt, then the Writ ſhall be, And which after the demiſe by her* C. *&c. ought to revert by form.*

And the Aunt, and the Neece, may joyn in that Writ, where the Tenant in Dower doth alien in Fee, and they have the reverſion by decent from their Anceſtor, and the Proces is Summons, Grand Cape, and Petit Cape, *&c.*

Writ of Entre in conſimili caſu.

The Writ is not maintainable againſt Tenants in Tail, after poſſibility of Iſſue extinct, *Old Tenure.* 23 E. 2. *Entre Congeable* 56.

THere is another Writ of the like nature, which is called a Writ of *Entre in conſimili caſu*; and that Writ lieth where Tenant by the Courteſie, or for life, or for anothers life doth alien in Fee, or in Tail, or for life; now he in the Reverſion, who hath an eſtate therein for life, or in Fee-ſimple, or in Tail ſhall have that Writ during the life of the Tenant for life, who aliened, and that Writ is not given by the Statute of *Gloceſter*; which gave the Writ of *in Caſu proviſo*, but is formed and granted upon the Statute of *Weſt.* 2. *cap.* 24. *Which Wills, that as often as it ſhall happen in the Chancery, that in one caſe a Writ is found, and in the like caſe falling, wanting the ſame remedy not, the Clerks of the Chancery ſhall agree in the making the Writ, and that appeareth, H.* 3 E. 2.

And if the Tenant by the Courteſie doth alien, he in the Reverſion ſhall have ſuch Writ.

Command A. that, &c. he render B. *one Meſſuage, &c. which he claimeth, &c. and into which &c. but by* C. *who that to him demiſed, who that held by the curteſie of* England, *after the death of* E. *ſometime his wife, mother, great grandmother, or grandmother of the foreſ.* B. *whoſe heir he is, and which after the demiſe by him* C. *to the foreſaid* A *thereof made, in Fee, to the foreſaid* B; *ought*

ought to revert, by the form of the Statute in the like caſe, provided, as he ſaith, and unleſs, &c. And in the *Per* and *Cui* thus, *And into which, &c. but by* C. *to whom* D. *that demiſed, who that held by curteſie of* England. And in the *Poſt* thus. *And into which, &c. but after the demiſe which* C. *who that held by the curteſie of* England, *&c.* as above. *Whoſe, &c. thereof made to* F. *and which after the demiſe, &c.*

And if Tenant for life alien, then he in the Reverſion ſhall have a Writ in this form.

The King to the Sheriff &c. Command A. *that juſtly, &c. he render* B. *one Meſſuage, &c. into which the ſame* A *hath not entred, but by* C *to whom the foreſaid* B. *that demiſed for the life of him* C. *and which after the demiſe by him* C. *to the foreſaid* A *thereof made, in Fee to the foreſaid* B. *ought to revert, by form of the Statute, &c.* as above.

And note, that by that Writ it appeareth, that the Writ doth ſuppoſe, that the Tenant for life doth alien in Fee; and although he grant but for life, or in tail, yet the Writ doth ſuppoſe that he alieneth in fee, *&c.* But that is not material, for if it be in fee, or in tail, or for life, it is a forfeiture of his eſtate. And ſo in the caſe, in the Writ *in caſu proviſo*, and in the Writ of *Entre ad communem legem*, it ſuppoſeth the alienation to be made in fee, although it be but for life, or in tail, for that there is no other form; and it may be made in the *Per Cui* and *Poſt*, and that without title made in the Writ, becauſe it is of a leaſe made by the Demandant himſelf to the Tenant, who alieneth; but if the Father or other Anceſtor leaſe for life, and dieth, and afterwards the Tenant for life alieneth in fee, *&c.* and now the heir who is in reverſion, ſhall have a Writ, which ſhall comprehend a title in it, and ſhall be ſuch.

The King to the Sheriff, &c. That, &c. he render B. *one Meſſuage, &c. which he claimeth, &c. and into which &c. but by* C. *and* D. *his wife to whom* I. *father or mother, other Anceſtor of the foreſaid* B. *whoſe heir he is, that demiſed for the life of the* C. *and* D. *and into which after the demiſe, &c.* As above. [207]

And there the Writ doth ſuppoſe, that the wife demiſe it, *&c.* and yet ſhe ſhall have a *Cui in vita* after the death of her husband, to recover the Freehold, notwithſtanding the alienation made by her husband; and if Tenant for life grant his Eſtate unto another, and the Grantee alieneth in fee, *&c.* then the Writ ſhall be.

Into which the ſame A. &c. but by C. to whom D. who that held for his life of the demiſe of the foreſaid B. that demiſed for the ſame term, and which after the demiſe &c.

And if a man leaſe lands for term of life, and afterwards A dyeth, and his heir grants the reverſion to B. and the Tenant attorn, and afterwards the leſſee for life granteth his eſtate over to one who alieneth to *A.* in fee, now B. ſhall have ſuch writ.

Command A. &c. that he render B. &c. into which &c. but by C. who that to him demiſed, who that held for the life of D. of the Aſſign of the foreſaid B. which I. ſon and heir of R. which R. that to the foreſaid D. demiſed for the ſame term, thereof made to the foreſaid B. and which after the demiſe &c.

If H. leaſe lands unto R. for life, and afterwards granteth the reverſion to B in fee, and R. attorn, and afterwards R. alieneth in fee, B. ſhall have this Writ.

The K to the Sheriff &c Command A. that &c. he render B. &c. into which &c. but by R. who that to him demiſed, who that held for his life of the foreſaid R. of the aſſignment which L. who that to the foreſaid R. demiſed, for the ſame term thereof made to the foreſaid A. and which after the demiſe &c.

And if lands be given unto two and the heirs of one of B them, and he who hath the fee dyeth, and afterwards the Tenant for life alieneth in Fee, the heir of him in the remainder ſhall have this writ.

Into which &c. but by G. who that to him demiſed, who that held for his life of the demiſe which H. thereof made to the ſame C. and D. and to the heirs of him D. father of the foreſaid B. whoſe heir he is, and which after the demiſe &c.

Vide 3. E. 2 Entre 6. contra. For its not given by the Statute of *Gloceſt.* But *Weſt.* 2. cap. 24. ſee 206. fol.

And by that appeareth, that he in the remainder ſhall have a writ of *in conſimili caſu*, if Tenant for life alien in Fee.

And if an Abbot or Prior leaſe lands for life, and alie- C neth, and the Prior dieth, the ſucceſſor ſhal have ſuch writ.

Command A that &c. he render B. one Meſſuage &c. which he claimeth to be the right of his Church of St. Thomas the Martyr of K. and into which &c. but by C. to whom D. that demiſed who that held for his life of the demiſe which S. ſometime Prior of K. predeceſſor of the foreſaid Prior thereof made to the foreſaid D. and which after the demiſe &c.

And if Tenant in tail make a Leaſe for life, and the D Tenant for life alieneth in fee, the Tenant in tayl ſhall

have

have a writ *in conſimili caſu*. And ſo it ſeemeth if Tenant in tail do leaſe the land unto another for the life of the Leſſee, and dyeth, and the Tenant for life alieneth in fee; the heir in tail may chooſe to have a Formedon, or to ſue the writ of *Conſimili caſu*, living the Tenant for life; For the Tenant in the action, ſhall not have the plea to abate the writ, to ſay, that he hath title to have a Formedon of the land &c. But if Tenant in tayl leaſe lands for the term of his own life, which is not any deſcent, and afterwards the Tenant for life doth alien in fee, and the tenant in tayl dieth, his heirs ſhall not have a writ of *Conſimili caſu* but ſhall be put to his Formedon in that caſe; for there he hath not title to have any other action by color of any demiſe, but in the caſe before, he had title by reaſon of the diſcontinuance made for life, to claim by reaſon of the right in reverſion deſcended to him, ſo that he had right by reaſon of the reverſion in his father reſerved upon the leaſe, and alſo by reaſon of the title of the entail to chooſe what action he would have, *tamen Quære.*

E A leaſe was made to one for term of life, the remainder unto another in fee, and afterwards the Tenant for life did alien in fee, for which he in the remainder brought a writ *de conſimili caſu*, and the writ was abated. *Paſ.* 7. *E.* 3. But the Court there ſaid, that the cauſe was, becauſe he in the remainder was not to have the remainder *in facto* until it fell, and that after the death of Tenant for life; and it is not like unto a reverſion; but the law is not taken ſo at this day, but that he in the remainder hath the remainder veſted in him, as he in the reverſion hath the reverſion; for he ſhall have an action of waſt, and ſhall enter for the alienation of his Tenant, as well as he in the reverſion; and therefore it followeth, that the remainder is in him *in facto*; for which cauſe I conceive, that judgement was not rightly given, And *Hil.* 18. *E.* 2. it was holden by Juſtice F *Herle*, that the writ did lie for him in the remainder, &c. And the heir in tail brought a writ of *conſimili caſu* upon an alienation made by Tenant by the curteſie, and the writ was maintainable. *T.* 31. *E.* 1.

Writ of Entre ad comunem legem.

THe Writ of *Entre ad comunem legem* lyeth, where Tenant in dower, or Tenant by the curteſie, or for life, do alien in fee, or for the life of another, or in tail the lands which they hold, &c after their death, he in the reverſion, who hath it in fee or for life, ſhall have that writ of *Entre ad comunem legem*, and the writ ſhall be ſuch, &c. G

The K. to the Sheriff, &c. com. A. that juſtly, &c. he rend. H
B. *&c which he claimeth to be his right and inheritance, and*
[208] *into which the ſame A. hath not entred, but by C. which was the wife of D. which that to him demiſed, which that held in dower of the gift of the foreſaid D ſometime her husb. fath. or other anceſtor of the foreſaid* B. *whoſe heir he is as he ſaith, &c. and unleſs, &c.*

And that is a Writ for the heir in the reverſion, who hath the ſame by diſcent, and may be in the *Per*, *Cui*, and *Poſt*. A

And if a woman recover dower, and afterwards alieneth in fee and dieth; then the writ of *Entre ad comunem legem* ſhall mention the recovery, &c. and if tenant by the curteſie alieneth in fee and dyeth, the heir ſhall have ſuch writ. B

Command A. *that, &c. he rend.* B. *&c. which he claim. to be his right, &c. and into which he hath not entred but by* C. *who that held by the curteſie of* Engl. *after the death of* D. *ſomet. his wife, mother of the foreſaid* B. *whoſe heir he is, as he ſaith, &c.*

And may be brought in the *Per*, *Cui*, and *Poſt*, as the Caſe is.

And if Tenant by the curteſie alien in fee and dieth, he in the reverſion who is heir in fee-ſimple, may ſue that Writ, or an aſſiſe of Mortdaunceſtor given by the ſtat. of *Glouceſt. cap.* 3.

And if Tenant for life alieneth in fee, and dyeth, he in the reverſion may have that writ in diverſe forms; One, If he ſhall have the reverſion by diſcent, the Writ ſhall be, *Com. A. that &c. he rend.* B. *&c, which he claim. &c. and into whi. h the ſame* A *hath not ent. but by* C. *to whom the foreſ.* B. *or* D. *fath. or other anceſt. of the foreſ.* B. *whoſe heir, &c. that demiſed for the life of him* C. *as he ſaith, &c.* C

And he may leave out theſe words in the Writ, *Quod clamat eſſe jus & hereditatem ſuam, &c.* When the demandant

dant made the grant to the Tenant for term of life who alienes, &c.

D And that writ may be in the *Per*, *Cui*, and *Poſt*, as the
E caſe is. And he may bring a writ of *ad terminum qui præteriit* if he will, if the tenant for term of life doth alien, and dieth, as it ſhall pleaſe him:

F And if Tenant for term of life do grant over his eſtate unto another, and he in the reverſion granteth the reverſion in fee, and the tenant doth attorn, and afterwards the ſecond grantee doth alien in fee, then the grantee of the reverſion ſhall have ſuch writ.

Into which the ſame A. hath not, &c. but by C. who that to him demiſed, who that held for his life of the foreſ. B. of the aſſignment which I. who that to the foreſaid C. demiſed for the ſame term thereof made to the foreſaid B. as he ſaith: And it
G may be in the *Per*, *cui*, or *Poſt*, as the caſe is, and in the writ which is in the *Poſt*, ſhall be this clauſe.

And which after the death of the foreſaid C. to the foreſaid B. ought to revert by form of the aſſignment foreſaid as he ſaith, and whereof he plaineth, &c. as he ſaith, &c.

Writ of Ceſſavit.

H THe Writ of *Ceſſavit* lyeth in divers ways. For one writ is where there is Lord and tenant, and the tenant will not pay his rent nor do his ſervices as ſuit &c. to his Lord as he ought to do, nor hath ſufficient goods or chattels upon the Land to be diſtreined for the rent or ſervices behind; but ſuffereth the lands to ly freſh, not occupied for 2 years following together; Then the Lord of whom the Lands are holden, may have the writ againſt the Tenant, and if it be found for him, he ſhall recover the land, if the tenant will not find ſureties to pay the Rent then after. And that Writ is of ſuch form.

Tenant in Dower ſhal have a *Ceſſavit*, and ly the ſcilin in her husband. 1. E. 1. Ceſſ. 54. 43. E. 3. 15. 9 H. 7. 16. He for life ſhal have *Ceſſ.* but not Leſſee for years, for that it is a **Precipe**. 12 R. 2 *Ceſſavit* 45 *Ceſſ.* of a rent. 5 H. 7. *Ceſſavit of advowſon*; 23 E. 3. *Ceſſavit* 46. 43 E. 3. 15. *ac.*

The K. to the Sheriff, &c. com. A. that &c. he rend. B. one meſ. &c. which the ſame A. holdeth by cert. ſervices, and which to him B. ought to revert by form of the ſtatute of the Com. Coun. of our Realm, thereupon provided, becauſe the foreſ. A. in doing the foreſ. ſervices two years now hath ceaſed, as he ſaith, &c.

And that writ is given by the ſtatute of *Weſt.* 2. *cap.* 21. and may be brought in the *Per*, *Cui*, and *Poſt*. The

48. E. 3. 4. The ſeiſin was alleged in the Feoffee for and the ceaſer in the feoffee 39. E. 3. Br. *Ceſſ.* 19 *ac.* Note that if the Feoffee himſelf ceaſe, the Writ ſhall not be in the Per but

The *Per* thus, *Into which the ſame A. &c. but by C. who that to him demiſed, who that of the foreſaid B. held by cert. ſervices, and which to him B. &c. unto provided, becauſe that the foreſ. A. or becauſe that the foreſaid C. in doing the foreſ. ſerv. two years now hath ceaſed* And it ought to be alledged in the Writ by whom the ceaſer was.

And in the *Per* and *Cui* thus, *Into which &c. but &c. by C. to whom D. that dem. and that of the foreſ. B. held, &c.* And in the Poſt thus, *Into which &c. but after the demiſe which A. who that of the foreſ. B. held by cert. ſerv. thereof made to A. and E. and which to him A. ought to revert becauſe the foreſaid &c. as he ſaith, &c. and whereof, and unleſs, &c.*

general, cont. if the feoffor ceaſe before the feoffment, ſo if the diſſeiſee ceaſe before the diſſeiſin, the writ ſhall be in the Poſt, 21. E. 3. 44. Br. *Ce.* 17.

And there is another form of *Ceſſavit*, without making mention of any Entry, thus;

Com. W. of F. and A. his wife, that &c. they render to the Abbot of S. two meſſuages, which I. of B. held by certain ſervices, and which to him the Abbot &c. becauſe the foreſ. W. and A. in doing, &c.

44, E. 3. 27. 14. H. 6. 15. 19. E. 2. *Ceſſ.* 30. 18. E. 3. 95. *ib.* 34. & 35. 33. H. 6. 53. *ac.* but there it is ſaid, that if the tenant ceaſe and makes a gift in tail, that the Lord may have *Ceſſavit* in the *Per*-

And the *Ceſſavit* lieth for ſuit of Court; but the donor in tail ſhall not have a *Ceſſavit* againſt the Tenant in tail; but if a man maketh a gift in tail, the remainder over in fee unto another, or unto the right heirs of the tenant in tail, there, in that caſe the Lord of whom the Lands are holden immediate, ſhall have a *Ceſſavit* againſt the Tenant in tail, becauſe that he is tenant to him, &c.

[209] 10 E. 4. 1 & 2. 37. *b.* 6. 45. he plead that the land was ſuffic. to his diſtreſs without ſaying *overt* and good: 2 H. 4, 5. 35. H. 6. *Ceſſ.* 7. *ac.*

And if a man ceaſe to pay his rent and ſervices for two years, and incloſe the land, ſo as the Lord cannot diſtrein, if he break not the gates, or the hedges of the land which make the incloſure, the Lord ſhall have a *Ceſſavit* although the tenant hath ſufficient cattel upon the land to be diſtreined for the rent; for the land ought to be open, and alſo there ought to be ſufficient to diſtrein for the rent, &c. But the land is not open to his diſtreſs, if there be not ſufficient upon the lands to his diſtreſs, &c. and ſo open to his diſtreſs, is a good plea, without ſaying more in ſuch caſe, *M.* 2 *H.* 4. 1.

And

A And if the cattel of a ſtranger do eſcape into the lands, thoſe cattel are not ſufficient nor overt to his diſtreſs; but if they be the tenants cattel it is otherwiſe. 35.b.6. *Ceſ.* 7. *ar.* but if a man occupy at will, his goods are ſufficient.

B If three men hold by one entire rent, as by a horſe, and the Lord doth recover two parts of the land againſt two of them, and the third findeth ſureties, &c. the whole rent is extinct by that recovery. 5.E.2. *Avow* 206. *Br. Apporc.* 20.

C And a man ſhall not have one *Ceſſavit* for lands which are holden by ſeveral ſervices, but he ought to ſue ſeveral writs. 3 E.3.47.

D If the Lord do diſtrein pendant his Writ of *Ceſſavit* againſt his Tenant, the Writ ſhall abate. *Ceſ.*40.4.*b.* 6. 29.10.*b.*

E And the Lord ſhall have a Writ of *Ceſſavit* againſt Tenant for life, where the remainder is over in fee to another. 7.24.45.*E.* 3.27.14.*b.* 6.25.48.*E.* 3. 4.

F The quantity of the ſervices is not traverſable in a *Ceſſavit*, but the ſame ſhall be taken by proteſtation. 48 *E.*3 4.

G The ſeiſin of the ſervices is not traverſable in a *Ceſſavit*, but in a *Ceſſavit* generally the tenure is traverſable. *Ceſ.* before ſeiſin.

H The aunt and the neece ſhall not joyn in *Ceſſavit* for a ceaſer made before title accrued to the neece: but for a ceaſer in both their lives they ſhall join in a *Ceſſavit*. 33.*E.*3.*Wil. by Ceſ.*42. 20.*E.*3.*Ceſ.* 47.11.*E.*3.

And a man may have a *Ceſſavit* againſt ſeveral perſons, and ſeveral tenants by ſeveral *Precipes*, &c. but not by one *Prec.* A *Ceſſavit* doth not ly for him in the reverſion againſt ten. for life, nor againſt ten. in dower, but againſt tenant by the curteſie, by the L. *Paramount*, becauſe he is tenant to the I L. *Paramount*, *tamen quære* of that caſe. But tenant by the curteſie, tenant in dower, or tenant for life ſhall have a *Ceſſavit* againſt the tenant who ceaſeth. *Ceſ.* 30. 13. *E.*2.*ib.* 51. 26. *E.* 3. *Ceſſ.* 65. 7. *b.* 4. 20.

It is a good plea in a *Ceſſavit* to ſay that he did not ceaſe for two years before the Writ brought.

And by the opinion of *Thorp* & *Haukford*, a man ſhall not have a *Ceſſavit* againſt an Abbot or a Prior of the lands of their foundation: but I know no difference but that the Lord ſhall have a *Ceſſavit* againſt an Abbot or a Prior aſwel as againſt others of the lands which he holdeth of them by rents, or other ſervices, but for the lands which they hold in *Frankalmoign*, a *Ceſſ.* doth not ly for not doing the ſerv. neither doth a *Ceſſavit* lie for not doing homage or fealty. 18. *Aſſ* 1. *Br. Ceſſ.* 20.

And if a man holdeth lands in ſeveral Counties by one Tenure and one Service, if he ceaſe, &c. a *Ceſſavit* doth not ly. *Quod Vi. M.* 18, *E.* 3. 1. *Aſſiſe.*

And

And there is another Writ of *Ceſſavit* grounded upon the Statute of *Weſt.* 2. *cap.* 41. That if a man give Land unto a Religious Houſe, or unto another to find a Chaplain to ſing Divine Service, or to find certain tapers to burn before ſuch an image, or to diſtribute certain bread and beer every week unto poor men: Now if theſe ſervices be not done for two years, nor ſufficient diſtreſs upon the lands for the time to diſtrein for thoſe ſervices, Then he or his heir who gave the lands, ſhall have a Writ of *Ceſſavit*, thus:

The K. to the Sher. &c. Com. S. the Biſh. of Worceſt. that &c. he rend. H. Earl of D. one meſ. &c. in the City of C. which T. *lately Earl of D. brother of the foreſaid* H. *whoſe heir he is, gave to* W. *ſometime biſh. of* W. *and his ſucceſſors biſh. of the place foreſ. to celebrate the obite of I. the brother and* M. *the mother of the foreſ.* T. *and alſo the obite of the ſame* T. *and of* R. *of* H. *after their deceaſ. and which to the foreſaid Earl ought to revert by the form &c. becauſe the foreſaid Biſh in celebrat. the obite foreſaid two years, now hath ceaſed, as he ſaith,* W *&c.*

And thus for a chant. Com. the Abbot of N. that, &c. he render B. *and* C. *his wife one meſ &c. which* R. *great-gr. of the foreſ.* C. *whoſe heir ſhe is demiſed to* E. *ſometime Abbot of N. to find a certain Canon for the ſouls of the anceſt. and ſucceſſ. of the ſame* R. *in the Abby of N. divine Service to celebrate, and which to the foreſaid* B. *and* C. *ought to revert by form of the Statute of the Com. Coun. of this Realm upon ſuch demiſe provided, becauſe the foreſaid Abbot in the find. the foreſaid Canon two years, now hath ceaſed, as he ſaith, and unleſs, &c.*

And the like Writ may be ſued againſt a Parſon for lands given to his Predeceſſor in fee to ſay divine Service in ſuch a Chappell from three weeks unto three weeks.

And ſo a man ſhall have ſuch Writ for Lights, or for drinkings for the poor, or other Almeſdeeds, if the ſaid Almeſdeeds be withdrawn for two years together.

And where a Religious man, or other ſpirituall perſon, bringeth that Writ of *Ceſſavit*, it ſhall not be ſaid in the Writ, *Quod clamat eſſe jus & hereditatem ſuam, &c.*

And a man ſhall have a *Ceſſavit* for not doing of ſeveral things which he ought to do, thus:

Com.

Com. A. &c. that, &c. he render B. &c. which T. great-gr. of the foreſaid B. *gave to W. ſometime Rector, &c. and his ſucceſſors Rectors &c. to find a certain Chaplain divine ſervice for the ſouls of the anceſt. of the ſame T. in the Church, &c. to celebrate and two wax lights to burn the whole time which that Maſs ſhall be ſaid, and which to him* B. *ought to revert, becauſe the foreſaid &c. in finding the foreſaid Chaplain and wax lights two years, now hath ceaſed.* [210]

And the like Writs may be made in the Per, Cui, and *Poſt.*

A There is another Writ of *Ceſſavit* founded upon the Statute of *Glouceſt. cap.* where a man giveth certain lands in fee-farm, to find him certain eſſovers to burn in the Winter, &c. or clothing, or to pay the fourth part of the value of the land yearly, and afterwards he ceaſeth, and lets the land lye freſh, not manured for two years together, then he or his heir who gave the land, ſhall have the Writ of *Ceſſavit* which followeth, *viz.*

The King to the Sheriff &c. Com. A. that &c. he render B. *one meſ. &c. which the ſame* B. *to him demiſed in fee farm, rend. therefore yearly to the ſame* B. *the third or fourth part of the value of the meſſ. foreſaid, and which to him ought to revert by form of the ſtatute of the Com. Council of this Realm thereupon provided, becauſe the foreſaid* A. *in the payment of the foreſ. farm two years, now hath ceaſed, as he ſaith, and unleſs, &c.*

And in the Per *thus, And into which the ſame* A. *hath not entr. but by E. father of the foreſ.* B. *whoſe heir he is, who that to him demiſed in fee farm. Or thus in the* Per, *and* Cui, *but by* D. *to whom the foreſ.* B. *or* C. *father of the foreſaid* B. *whoſe heir he is, that demiſed in* D. *in fee farm.*

And in the Poſt *thus. But after the demiſe which the foreſ.* B. *or* C. *father of the foreſ.* B. *whoſe heir he is thereof made to* D. *in fee farm, &c. hath ceaſed, as he ſaith, and whereof he plaineth, &c. and unleſs, &c.*

B And if a woman give lands in Fee-farm, rendring to her the moity, or the third part of the value, and afterwards taketh husband, and the tenant ceaſeth for 2 years, and ſuffereth the land to lye freſh, and doth not pay the rent, the husband or wife ſhall have a Writ of *Ceſſavit*, and the Writ ſhall ſuppoſe *quod ad predict.* A. & B. (his wife) *reverti debet*, and not to the wife only.

And

And not that theſe gifts in fee farm, to render the third part, or the fourth part, or to find a Chaplain to ſay divine Service, or to find him clothing or eſtovers, or to diſtribute, &c. upon which a Writ of *Ceſſavit* lieth, it behoveth that this were made before the ſtatute of *Quia emptores terrarum, &c.* upon which feoffments a tenure is reſerved and implied in the gift. But if a man at this day after the Statute of *Quia emptores*, will give lands in fee farm to render the third or the fourth part of the value of the land, or to find a Chaplain, &c. if the tenant ceaſeth, &c. the Donor nor his heir ſhall not have a writ of *Ceſſavit*, becauſe there is not any tenure betwixt them. *Quod vide M.* 45. *E.* 3 *T. Ceſſavit.*

But if a man giveth lands in tail at this day to find a Chaplain, or to render a third part of the yearly value, or to find eſtovers yearly, if the tenant ceaſeth of theſe ſervices, it is a doubt whether the donor ſhall have a *Ceſſavit* to recover the lands.

And it ſeemeth that the donor ſhall have a *Ceſſavit*: for a Writ of *Ceſſavit* is given by the ſtatute of *Weſt.* 2. *cap.* 41. for lands given to find a Chaplain, or to find tapers, or diſtribute alms to poor men. But then it ſeemeth that the ſame is intended of gifts in feeſimple, becauſe that the ſtatute of *VWeſt.* 2. *cap.* 41, ſaith:

That an action ſhall ly for the Donor or his heir to dem. and the lands ſo given in demean, as it is appointed in the ſtatute of Gloceſt. of tenements demiſed to do, or render the fourth part of the value, or more, and upon which feoffments a tenure was reſerved and implied, becauſe the ſtatute of Quia emptores, *&c. was made after the ſtatute of VWeſt.* 2.

And alſo before the ſtatute of *Quia Emptores terrarum.* If a man make a Feoffment in Fee, and doth not ſay of whom the Feoffee ſhall hold, &c. then the Feoffee ought to hold of the feoffor and his heirs. By which it appeareth, that if a man at the time of the making of the ſtatute of *VWeſt.* 2. give lands to hold in fee farm, rendring the value, or the third part, &c. that he held of the feoffor, & his heirs, although that no tenure was expreſſed therein. And the ſtatute of *Gloceſt.* was made *anno* 6. *E.* 1. and the ſtatute of *VWeſt.* 2. made *anno* 30. *E.* 1. and the ſtatute of *Quia emptores terrarum*, was made *anno* 18. *E.* 1. And therefore

fore if a man maketh a feoffment in fee at this day, to find tapers burning, or to render the third part of the value, or the like ſervices, he ſhall have an action of Covenant, upon the feoffment, if it be made by deed indented, and no other remedy for the ſame, as I conceive.

D And if land be given before time of memory to find a Chaplain to ſing in his Chappell within his Manor every week: Now by the ſtatute no man ſhall have a *Ceſſavit* for the ceſſor of ſuch ſervice, but the donor or his heirs; but upon that ſpecial matter he ſhall have a ſpecial Writ for him who is ſeiſed of the Manor, if he and his anceſtors have been ſeiſed of the mannor time out of mind, againſt him who ought to do the ſervice. *T. anno 7. H. 2.*

E And a *Ceſſavit* doth not lie againſt an Abbot or Prior for a ceſſor of ſervices of lands which they hold in *Frankalmoign*, becauſe no ſervice certain is expreſſed in the gift. Alſo it appeareth before the ſtatute, that the Lord could not have a *Ceſſavit* againſt the tenant, but that he may ſeiſe the lands for arrearages of the rent or ſervices by judgement of the Court, if it were found that they were behind, *quod vi. P. 20. H. 3.* But at this day he cannot do ſo, but bring a *Ceſſavit*.

Writ of contra formam Collationis.

F THe Writ of *Contra formam Collationis*, lyeth where a man giveth lands or tenements to an Abby, or other houſe of Religion before the ſtatute of *Quia emptores terrarum*, to hold of him in *Frankalmoign*, and afterwards the Abbot or the Covent do alien the ſame land unto another in fee.

Vid. 2. & M. Dy. 109. [211] yet it ſeems by *Br. Alien* 15. that Biſhop, Dean and chapt. and other who are not Religious are not within this ſtatute. 40 E. 3. 27.

A The donor or his heir may ſue that Writ of *contra formam Collationis*, and that Writ alwaies ought to be ſued againſt the Abbot who aliened on his Succeſſors, and not againſt the tenant of the land. But when he hath recovered the land againſt the Abbot or his ſucceſſors, then he ought to ſue forth a *ſcire facias* againſt the tenant of the freehold of the land, and the tenant may plead in Bar matter which B may prove that the demandant hath no title, or that he hath releaſed his title. And if he who recovereth by the *Contra formam Collationis* doth enter upon him who is tenant of the Freehold of the land, then it ſeemeth the tenant ſhall have an aſſiſe againſt him. The Writ doth not lie but where the land is given in *Frankalm.*

And

And that writ of *Contra formam Collationis*, lyeth onely for him or his heirs, who gave the land in *Frankalmoign*, and not by any ſtranger: But if he who ought to have the action dieth, and doth not bring any action for the ſame, yet his heir may bring the action for to recover the land; For the alienation doth give right and title to him who gave the lands, or unto his heirs for to recover the lands, and to have the lands again for that alienation. And it lyeth againſt the Succeſſor upon an alienation made by his predeceſſor. And yet ſuch writ brought againſt the Succeſſor, upon the alienation made by his predeceſſor was abated. H. 17. E. 3. But yet notwithſtanding it ſeemeth the Writ well lyeth, becauſe that the right is given to him who gave the lands, and unto his heirs to have the lands again by the Statute, and that right cannot dye, For the heir ſhall have the action upon the alienation made in the life of the father, becauſe the right of the action doth deſcend, and by the ſame reaſon the heir or the Donor ſhall have the action againſt the Succeſſor upon alienation made by his predeceſſor, becauſe the right doth occur to the donor or his heir by the alienation, for which cauſe it is reaſon that he gave the action againſt the ſucceſſor to recover that right and to prove the ſame, the form of the writ in the Regiſter is ſuch.

Contra formam colla. 22 *b* 4. 7. *Hauk ford cont.* to *Fitz.* here.

D

The King to the Sheriff, &c. command A. the Abbot of N &c. that he render to B. one meſſuage, &c. which to the ſame houſe was given in frankalmoign by the foreſaid B. *or by* H. *the father of the foreſaid* B. *whoſe heir he is, and which by alienation by him the Abbot, or by* R. *ſometime Abbot of* N *predeceſſor of the foreſ. Abbot, againſt the form of the Collation foreſaid thereof made in Fee to the foreſaid* B. *ought to revert, as he ſaith, and unleſs, &c.*

And teat Writ of *Contra formam collationis* doth not lie, although the Abbot alien in fee, &c. but where the Abbot and Covent alien in fee, *&c.*

21 H. 4. 68. *Hauk f.*

E

And if a man doth recover in value, lands againſt an Abbot, who entreth into the warranty, and loſeth, &c. The Founder ſhall have a *Contra formam collationis* upon the ſame, as it appeareth in the book, M. 45. E. 3. 18.

Old Aſſ. 14. it lyeth of a rent. 28. E. 3. *Cont. for. collationis* 6.

If an Abbot and Covent alien an advowſon in fee, at the next avoidance the Founder or his heir may preſent unto the advowſon, becauſe they cannot ſue a *Contra formam collationis.*

F

L

And

G And if an Abbot and Covent alien the Lands which are given by the King in Frankalmoign; ſome ſay that the King may enter, but it ſeemeth that he ought for to ſue forth a *Scire facias* upon an office found of the ſaid Alienation: See the Caſe, *M.* 45 *E.* 3. 18.

H And that Writ of *Contra formam collationis* is given by the Statute of *Weſt.* 2. *cap.* 41. and the Proces is Summons, Grand Cape, and Petit Cape.

I And a Writ of *Contra formam collationis* lieth as well for Land which was not given for the foundation of the Monaſtery, if it were given in Frankalmoign, as for Lands of the foundation, but it ought for to be given in Frankalmoign before the Statute of *Quia Emptores, &c.* For a man could not give Lands after the Statute of *Quia Emptores, &c.* unto an Abbot or Prior to hold in Frankalmoign, becauſe he ought to hold of the Lord Paramount, of whom the Tenant held before: But the King at this day may give Lands in Frankalmoign to an Abbot or Prior, for that he is not bound by the Statute. And alſo the King may licence his Tenant to give Lands unto an Abbot or Prior in Frankalmoign in Feeſimple, to hold in Frankalmoign, for he may diſpence with the Statute, and grant ſuch authority to his Tenant if he will: But it ſeemeth another Lord cannot grant ſuch Licence to his Tenant, by reaſon of the intereſts of the Lords Paramount; but the King and all the Meſn Lords together, may get Licences unto the Tenants Peravail, who hath the fee of the Lands, that they may alien the ſame to an Abbot or Prior to hold of him in Frankalmoign, or to grant the ſame unto a Lay perſon, to hold of him by certain ſervices, becauſe that the Statute of *Quia Emptores, &c.* was made onely for the advantage of the Lords: And therefore they all may diſpence with the Statute which ſee t, *Contra formam collationis*, *Lib. d' Ent.* 119. And there it appeareth, that the heir ſhall have the Action againſt the Succeſſor of the Abbot, who alienes in the time of his Anceſtor. 43 H. 6. 6. contr. 40 E. 3. 27.

Writ of Formedon in the Diſcendor.

L THe Writ of Formedon in the Diſcendor is grounded upon the Statute of *Weſt.* 2. *c.* 1. & lieth where a man giveth

veth Lands to one, and the heirs of his body begotten; or unto a man and a woman, and to their heirs of their bodies begotten; or unto a man and a woman who is his Couſin in Frank-marriage, by force of which gift they are ſeiſed, and afterwards he alieneth thoſe Lands, or is
[212] diſſeiſed of them and dieth, his heir ſhall have that Writ of Formedon in the Diſcendor to recover the Lands given in Tail.

And ſo upon every Gift in Tail of Lands or Tenements, if the Anceſtor doth alien the Lands or Tenements, or be diſſeiſed or deforced thereof and dieth: He who is heir unto the Lands by force of the Gift, ſhall have that Writ of Formedon in the Diſcendor, againſt him who is Tenant of the Lands or Tenements, or Pervor of the Profits of the ſame Lands or Tenements: But that Writ againſt the Pervors of the Profits is given by the Statute of *Anno* 1 *H.*7. 1:

And in ſpecial Caſe, a man may have a Formedon in the A
Diſcendor of Profit apprend' in any Lands or Tenements, or iſſuing out of any Lands or Tenements; as if a man grant twenty ſhillings or twenty pound iſſuing out of any Land or Tenement, unto a man, and the heirs of his body begotten; or unto a man in Frank-marriage with his daughter. Now if the Donee alien that Rent, or is diſſeiſed of the Rent, and dieth, his heir who is his ſon, or daughter, ſhall have the Writ of Formedon in the Diſcendor of that Rent.

And ſo if a man grants the moyety of the Profits a- B
riſing out of his Mill, unto another man, and the heirs of his body, and the Donee dieth, and his heir is deforced of the Profits, the heir ſhall have a Formedon in the Diſcendor for thoſe Profits, and the form of the Writ is ſuch.

The King to the Sheriff, &c. Command W. *Maſter of the Hoſpital of* S. T. *Martyr of* S. *that, &c. he render to* I. C. *the moyety of the iſſues coming from two Mills of him, the Maſter in* M. *which* B. *ſometime Maſter of the Hoſpital, &c. gave* W. *of* C. *and the heirs of his body iſſuing, and which after the death, &c.*

And

And so it seemeth, That if a man granteth to one and the heirs of his body, pasture for 20 oxen, or for 100 sheep &c. and the donee dieth, and his son who is his heir is deforced thereof, then he shall have a Formedon in the discender, and the writ shall be:

The King to the Sher. &c. com. &c. that he render A. B. pasture for 20 oxen, or for one hundred sheep, in one hundred acres of land in M. which &c.

But if a man granteth common of pasture to one and the heir of his body begotten which has cattel, and the donee dieth, and the heir is deforced of the common, the heir shall not have a Formedon in the Discender of the common, but a *Quod permittat*, in the nature of a Formedon, and shall come upon the gift and the special matter. But the writ of Formedon is an action auncestrel: For if he who is seised by force of the tail be disseised of the land he shall have an Assise of *Novel disseisin*, or an action of trepas at his pleasure, and not a Formedon. And what manner of gift shall be said a gift in tail, and what not appeareth by Mr. *Littleton* in his *Chapter of Estate tail*, and therefore it is not necessary for to express the same here: But the forms of the writs of Formedon are many, as appeareth by the Register thus:

D *The King to the Sheriff &c. com. A. that &c. he render B. the man. of N. with the appur. which C. gave to D. and E. his wife and to the heirs of the bodies of them D. and E. issuing, and which after the death of the aforesaid D. and E. to the foresaid B. son and heir of the foresaid D. and E. ought to descend, by form of the gift foresaid as he saith, and unless, &c.* vi. 4. Eliz. Dyer 226.

And if the gift be made in frankmarriage, then the form of the Writ is such, *Which C. gave to B. in frankmarriage, with the daughter of the same C. and which after the death of the foresaid D. and E. to the foresaid B. son and heir of the foresaid D. and E. ought to descend, &c.* 22. b. 6. 36.

I And in his VVrit of Formedon he ought for to make mention of every man who was seised by force of the tail, and to name him son and heir in his writ, in this manner: *And which after the death of the foresaid D. and E. and F. son and heir of the same D. and E. to the foresaid B. son and heir of the same F. ought to descend, &c.* 2. b. 2. 19.

But if any of the heirs in tail were not seised by force of the tail, but overlive their father, and dieth before that he entreth into the land, or have any seisin thereof: then he needeth not for to name them heirs in his writ, but only some in this manner. *And which after the death of the foresaid D. and E. son of the same D. and F. son of the foresaid E. to the fores B. son of the foresaid F. and cousin and heir of the foresaid D. ought to descend, &c.*

And so he ought alwaies to make the demandant Cousin and heir, or son and heir to him who was last seised of the tail, as the case is: And the surest way for the demandant is, to make every man who is named in the writ, son and heir in the writ, although they were not seised of the lands by force of the tail; for it is not material whether they were seised or not, although he name them heir in the Writ, *Quod vi.* Anno 8. and 11. *H.* 6.

And if Tenant in tail hath issue two sons and dieth, and a stranger abateth and entreth into the land, and afterwards the eldest son dieth before he entreth into the land, The youngest son shall have a writ of *Formedon* in the *Discender*, and needeth not to name his eldest brother heir to his father in the Writ, but only son, because he never had seisin of the land, but only held the estate: but if the eldest brother had entred and was seised by force thereof, and died without heir of his body, then the youngest son who is his brother and heir, ought to mention the eldest in the writ, and to name him son and heir to his father, and to make him self brother and heir unto him.

And if the heir in tail be seised by force of the tail or not, A
and after enter in to Religion and be professed, then his
heir shal have the writ of *Form.* in the *Discen.* in such form:
[213] *And which after the death of the aforef. D. and after that E. his son and heir the habit of religion took, in which habit professed he was as is said, to the foref. B. his son and heir ought to discend, &c.*

But if the father maketh a feoffment in fee, or leaseth the land for life, and entreth in religion, and is professed, yet his heir shall not have a formedon in the Discender, *quia habitum religionis assumpsit, &c* during the fathers life, because the father may lawfully give his lands during his life: and after the death of the father, he may bring the common writ of *formedon*, if he will, or that special writ, *q ia habitum religionis assumpsit*, at his election, as it seemeth

And

B And if tenant in tail goeth upon pilgrimage and dieth in his journey, his heir ſhall have a *Formedon* againſt a ſtranger who entreth and abateth: and the form of the Writ ſhall be ſuch: *And which after the death of the foreſ. D. and after that E. ſon and heir of the foreſaid D. his journey of pilgrimage took towards St. James, in which journey he died, as is ſaid: to the foreſaid B, ſon and heir, &c.*

C And if tenant in tail hath iſſue two daughters, and one of them hath iſſue a ſon and dieth, and afterwards the tenant in tail dieth, and a ſtranger abateth; now the daughter, and the ſon of the other daughter ſhall have a *Formedon* in this form.

That he rend. B and C. one meſſ. which D &c. and which after the death of the foreſ. E. and F. one of the daughters of the ſame E. to the foreſaid B. another of the daughters of the foreſ E. and to B ſon of the foreſ. F. couſin and heir of the foreſ. E. ought to diſcend, &c.

D And if tenant in tail hath iſſue two ſons and dieth, and the eldeſt ſon entreth, and hath iſſue and dieth, and his iſſue entreth and dieth without iſſue of his body, then the youngeſt ſon, the tenant in tail ſhall have ſuch writ of *formedon* if he be deforced of the land.

And which after the death of the foreſaid D. and E. ſon and heir of the ſame D. and F. to the ſon and heir of the ſame E. the foreſaid B. ſon of the foreſ. D. and couſin and heir of the ſo e aid F. ought to diſcend.

E And if a man give lands in tail unto a woman and the heirs males of her body, and of R. her late husband begotten, if the woman die, and a ſtranger doth abate, her heir male begotten by R. her husband ſhall have a *formedon* in this manner; *Which C. gave to D. which was the wife of R. and to the heirs males of the body of her D. and of the foreſaid R. ſometime her husband iſſuing, and which after the death of the foreſaid D. to the foreſ. to. ſon and heir of the ſame D. of her body, and of the body of the foreſaid R. procreated, ought to diſcend, &c.*

F And if a man give lands to R. and unto the heirs which the ſaid R. ſhall beget on his firſt wife, then the form of the writ of Formed. is ſuch; *Which W. gave to R. and his heirs which the ſame R. of his firſt wife ſhall procreate, and which after the death of the foreſ. R. and A. daugh. of G. which he firſt took to wife, to the foreſ. ſon and heir of the ſame R. of the foreſ. his firſt wife procreated ought to diſcend, &c.*

And

And if a man give lands unto a Woman and unto the heirs which he himſelf ſhall beget on the body of the ſaid woman, and after they have iſſue between them, two daughters, and one of them hath iſſue a daughter, and dyeth, and after the donor and the donee dyeth, the Aunt and the neece ſhall join in a Formedon for that land, if they be deforced thereof, and the writ ſhall be ſuch: G

Which R. gave to M and the heirs which the ſame R. of the body of her M. ſhould procreate, and which after the death of the aforeſaid M and A. one of the daughters of the ſame M. of her body by the aforeſaid R. *procreated, and to I. another of the daughters of the ſame M. of her body by the foreſaid R. procreated, and I. of S. ſon of the foreſaid A. and couſin and heir of the ſame M. ought to deſcend, &c.*

And if Lands be given to a man and his wife, and to the heirs of their two bodies, and they have iſſue a ſon and dye, and the ſonne is ſeiſed, and hath iſſue three daughters, which have iſſue and dye in the life of their father, and after one of the daughters hath iſſue and dyeth in the life of the grandfather, and afterwards the father and the three daughters dye, the Coparcenors of the three daughters ſhall have a Formedon in ſuch form. H

And which after the death of the foreſaid E and F. and W. ſonne and heir of the ſame E. and F. and A. M. and K. daughters of the foreſaid W. and of Sarah, *daughter of the foreſaid M. to the foreſaid A daughter of the foreſaid A. and to* John, *the ſon of the foreſaid K. and to* Walter, *ſon of the foreſaid S. couſins and heirs of the aforeſaid* William *ought to deſcend, &c.*

And if Lands be given to R. and I. and to the heirs of the body of R. begotten, and R. hath iſſue four daughters, and he and one of his Daughters enter into Religion, and are profeſſed, and I. dyeth, and afterwards one of the daughters of R. dieth before they have any poſſeſſion of the lands, and the other two daughters do ſurvive, and are deforced of the lands, they ſhall have a Formedon in ſuch form: I

That T. gave R. and I. and the heirs of the body of him R. iſſuing, and which after the death of the foreſaid I. and after that the foreſaid R. and Grace, *one of the daughters of the foreſaid R. the habit of Religion took, in which habit they are profeſſed*

ſeſſed as is ſaid, and alſo after the death of E. another of the Daughters of the foreſaid R. to the foreſaid M. and A. two other daughters of the ſame R. after the death of E. another of the daughters of the foreſaid R. *to the foreſaid M. and A. ought to deſcend, &c.*

And if the reverſion of tenant in dower be granted to a man in tail, and after the death of Tenant in dower, he is ſeiſed of the Land by force of the gift, and hath iſſue and dieth, and the iſſue entreth, and hath iſſue a daughter and dieth, and afterwards a ſtranger entreth and abateth in the land, the heir of the iſſue in tail ſhall have a [214] Formedon in this form:

Which I. of H. holdeth in dower of the inheritance of I. of S. which the ſame I. granted to W. of S. *and to the heirs of his body iſſuing after the death of the foreſaid I. to have, and which after the death of the foreſaid I. and W. and* R. *ſon and heir of the ſame W. to the foreſ.* Iſabel, *daughter and heir of the foreſaid W. ought to deſcend.*

And if a man leaſe lands for life, and afterwards grants the reverſion in tail, and then tenant for life dieth: Now if a ſtranger abate in the land, the grantee in the reverſion ſhall have ſuch writ; *Which I gave to P for his life, and which the ſame I. after granted to the foreſaid F. and the heirs of his body iſſu. after the death of him P. to have, and which after the death of the foreſaid P. to the foreſaid F. ought to remain by form of the gift and grant foreſaid.*

A And if a man leaſe lands for term of life, and afterwards grants the reverſion in tail, by fine unto a man and his wife, and unto the heirs which he ſhall beget on the body of his wife, and afterwards the tenant for life dyeth, and the husband and wife enter and are ſeiſed by force of the tail, and die, and a ſtranger abateth and entreth into the land; the heir ſhall have a formedon thus:

Which A. gave to B. for the life of him B. and which the ſame A. by fine thereof in the Court of the L. E. ſomet. K. of Engl. *our grandf. before C. and his Compan. then Iuſt &c. by his writ levied hath granted to D. and E. his wife, to have after the death of the ſame B. to the ſame D. and E. and the heirs which the ſame D. of the body of her E. ſhould procreate, and which after the death of the aforeſ. B. D and E. to the foreſ. F. ſon and heir of the foreſ. D. and E. of the body of her E. by the foreſ. D. procreat. ought to diſcend by form of the gift and fine foreſ. as he ſaith, &c.*

Another

Another Writ of Formedon in the Diſcender.

THERE is another Writ of *formedon* in the Diſcen- B,
dor, which is called a VVrit of Formedon of land, which he holdeth in coparcenery, and that writ lieth properly, where Tenant in tail dyeth ſeiſed, and hath iſſue many daughters, and they enter, and make a diviſion and partition of the land betwixt them, and one of the Coparceners after the partition doth alien her part and dieth, her heir ſhall have that manner of Writ of *formedon*; and that Writ lyeth for Lands given in frank marriage, aſwell as for other Lands given in tail.

And if lands in Gavelkind be entailed and diſcend to many brethren, as heirs to their Father, and they make partition betwixt them of the lands, and afterwards one alieneth his part, and dyeth, his heir ſhall have a *formedon* of that which they held in parts, and the form of the writ is ſuch.

The King &c. Command A. that &c. be render to B. fourſcore acres of land with the appurtin. in D. which together with other fourſcore acres of land with the appurtin. in the ſame Town L. gave to D. in frank marriage with I. daughter of the foreſaid L. and which after the death of the foreſaid T. I. and M. daughter and one heir of the ſame T and I. which thoſe held for her purparty, her of the foreſaid hundred and fifty acres of land by partition, betwixt her M. and K. ſiſter of the ſame M. daughter and other her heir of the aforeſaid T. and I. thereof contingent to the foreſaid B. ſon and heir of the aforeſaid M. ought to diſcend &c.

And if two Coparceners be Tenants in tail by diſcent C
from their father or mother, and afterwards they make partition, and one coparcener hath iſſue and dieth, and the other Coparcener dieth without iſſue, the heir of that coparcener who hath iſſue ſhall have a *formedon* in this form.

And which after the death of the aforeſaid T. and I. and K. daughter and one heir of the ſame T. and I. which thoſe held for her purparty, her of the foreſaid hundred and ſixty acres of land by partition betwixt her K. and M. ſiſter of the ſame K. daughter and other heir of the foreſaid T. and I. thereupon made contingent to the foreſaid M. to the foreſaid G. ſon of the foreſaid M. and Coviſen and heir of the foreſaid K. ought to deſcend &c.

And

And it appeareth by the Regiſter that a man ſhall have a writ of *Formedon* of land which he held in parti ion by the name of the moity in ſpecial caſe, as where two coparceners are daughters of Tenant in tayl, and they make partition betwixt them of the land, and afterwards one ſiſter dyeth without iſſue, and the other ſiſter alieneth the land, and hath iſſue and dyeth, the iſſue of the coparcener who had iſſue, ſhall have a *Formedon* of all the land in tail in this form.

The King to the Sheriff, &c. command F. that &c. he render H. 10. Meſ. 10. acres of land with the appurtin. &c. which L. gave to A. and the heirs of his body iſſuing, and which after the death of the foreſaid A. *and* M. *daughter and one heir of the ſame* A. *which the moity of the foreſaid Meſ. and land held for her purparty, and of B. daughter and other heir of the foreſaid* A. *which the other moity of the ſame Meſſuage and land held for her purparty, by partition thereof betwixt them made, which B. the ſaid moity the foreſaid* M. *conting. after the death of the ſame* M. *as ſiſter and heir of the ſame* M. *held, to the foreſaid H. ſon and heir of the foreſaid B. ought to deſcend.* And the writ is good, becauſe by the death of one ſiſter without iſſue the partition is made void; and the other ſhall have the whole land as heir in tail.

D And if a man give lands in tayl unto I. his daughter, and to the heirs of her body, and I. hath iſſue, two daughters and dyeth, and they enter and make partion between them, and afterwards one of the daughters hath iſſue, two daughters, and one of the two daughters hath iſſue, four daughters and dye, and afterwards the Aunt who was [215] one of the daughters of the Donee dyeth without iſſue &c. and a ſtranger abateth; the four daughters, and the iſſue of the other ſiſter ſhall have a *Formedon* in ſuch form.

That he render three meſſuages, one hundred acres of land, and twenty acres of Meadow, *and one hundred ſhillings of rent, with the appurtinencies in N. which together with the* Manor *of B. with the appurtenances* A. *gave to I. his ſon, and the heirs of the body of him I. iſſu. and which after the death of the foreſaid I. and daughter, and one heir of the ſame I. which thoſe held for her purparty, her after the death of the foreſaid* L. *of the foreſaid Mannor, Meſſuage, Land, Meadow, and Rent by partition betwixt their C. D. daughter and other heir of the ſame I. thereof*

made coming and the foresaid D. and A. and E. daughters of the foresaid D. to the foresaid Margarite, Margery, Katharine, *and* Constantine *daughters of the foresaid A. and to I. son of the foresaid E. and Cousen and heir of the foresaid C. ought to discend &c.*

And if the moity of any land be given to the husband A and wife, and unto the heirs of their two bodies begotten, and they have issue four daughters, and dye, and the sisters enter and make partition betwixt them, and afterwards the two sisters dye without issue, and the third sister alieneth, and dyeth without issue; the four sisters shall have a *Formedon* in this form.

And which after the death of the foresaid Roger, *and* Agnes, *and* Alice *younger daughter, and one heir of the same,* Roger, *and* Agnes, *which* Alice *the younger, the said fourth part held for her purparty, her of the foresaid moity, by partition betwixt her and* Isabel, *and* Alice *the elder, and the foresaid* Maude; *daughters, and three other heirs of the foresaid* Roger; *and* Agnes *his wife thereupon made contig. and of the foresaid* Isabel *daughter of* Roger, *and* Alice *the elder to the foresaid* Maud *sister and heir of the same* Alice, *the younger ought to discend &c.*

And to make a full Declaration of the Case of Formedon in the Discendor, upon which the writ is founded, it is necessary to have the Pedigree made in the writ, which you shall see here following.

Henry Russel.
Elizabeth his wife.

Henry Russel.

Joan.	*Joan.*	*Alice.*	
Joan.	*Maud.*	*Margaret.*	
John	Married	*Wil. Harper.*	
Gifford	to F.		
	Joan.	*Thomasine.*	*Margery.*	*Isabel.*
Roger.	*Joan.*	*James*	*Thomas*	*Thomas*
	Botre.	*Penros*	*Cole.*	*Trevethen.*

Henry

Henry *Ralph*

Gifford. *Trevethen.*

Henry Ruſſel gave land to *Henry Ruſſel* and to *Elizabeth* his wife, to *Henry* their ſon, and to the heirs of the ſaid *Henry* the ſon of his body lawfully begotten, and dyed, and after *Henry Ruſſel* the father and mother dyed, and *Henry Ruſſel* the ſon was ſeiſed by force of the tayl, and had iſſue *Joan*, *Joan*, and *Alice* had iſſue *Joan*, *Maud* and *Margaret*, and *Joan* was married to *John Gifford*, and had iſſue *Roger Gifford*, who had iſſue *Henry Gifford*, and *Maud* was married to *F.* and had iſſue *Joan* married to *John Botreaux*, *Thomaſine* married to *James Penros*; *Margaret* married to *Thomas Cole*, and *Iſſabel* married to *Trevethen*, and *Iſſabel* had iſſue *Ralp Trevethen*, and *Margaret* was married to *William Harper*; and *Henry Ruſſel* the ſon dyed, and *John* his brother entred and was ſeiſed by force of the tail and dyed, and a ſtranger abated, and all the heirs in tail are dead, but *Margaret Harper*, the wife of *William Harper*, *Henry Gifford*, *Thomaſine* married to *James Penros*, *Joan Botros* married to *John Botreux*, and *Margery Cole*, married to *Tho. Cole*, *Joan*, *Margaret* and *Ralph* ſon of the ſaid *Iſſabel*; now theſe Coparceners ſhall join in the *Formedon*, and the writ ſhall be ſuch.

The King to the Sheriff &c. command Reynold Rees, *that &c. he render* Wil. Harper, *and* Margaret *his wife*, Hen. Gifford, James Penros *and* Thomaſine *his wife*, John Botreux *and* Joan *his wife*, Thomas Cole *and* Margery *his wife*, *and* Ralph Trevethen *the Manor of R. with the appurtin. which* Henry Ruſſel *gave to* Henry *of* Ruſſel *and* Elizabeth *his wife, and to* Henry *the ſon of the ſame* Henry *of* Ruſſel *and* Elizabeth, *and the heirs of the body of him* Henry *ſon of* Henry *iſſuing and which after the death of the aforeſaid* Henry *of* Ruſſel, *and* Elizabeth, *and of* Henry *ſon of* Henry, *and of* John *ſon and heir of the ſame* Henry *ſon of* Henry, *and of* John *brother and heir of the ſame* John, *ſon of* Henry *and of* Alice *ſiſter of the ſame* John, *brother of* John, *and of* Joan *one, and of* Maud *another daughter of the ſame* Alice, *and of* Roger *ſon of the foreſaid* Joan *daughter of* Alice, *and of* Joan *one of the daughters of the foreſ.* Alice, *to* H. Gifford, *ſon of the foreſ* Roger *&* Tho. Joan *wife of* John, Margery *wife of* Thomas, *the other daughters*

[216] *daughter of the foresaid* Maud, *and to* Ralph *son of the foresaid* Isabel, *daughter of* Maud, *and Cousin and heir of the foresaid* John *brother of* John *ought to discend, &c.*

Another Writ of Formedon in the Discender, *called* Insimul tenuit.

THere is another manner of Writ of Formedon in the Discender, which is called *formedon qui insimul tenuit*; and that Writ lyeth by one Coparcenor, or by one heir in Gavel-kind of lands intailed, where they hold the lands intaild in Coparcen. without any partition made between them of the same, and afterwards one Coparcener doth alien her part unto a stranger in fee, and dyeth without issue, or hath issue, and dyeth; or if he dyeth seised, and hath issue, and a stranger doth ouster the issue, or the other coparcener doth put out the issue: the issue, or he which is heir to the Tayl of those Lands, shall have that writ of Formedon against the stranger, or the other coparcenor, who deforced her of the Land. A D

The K. to the Sher. &c. Command the Abbot of VVestm. &c. that he render B. and I. his wife, two parts of thirty shillings of rent, one thousand white loves of the price of twenty shillings, and five flagons of ale, of the prece of ten pence, with the appurtin. in B. which together with the third part of the same shillings of rent, bread and ale, with the appur. in the same Town A. gave to G. and B. his wife, and to the heirs of the Bodies of them G. and B. iss. and which after the death of the foresaid G. and B. and R. son and heir of the same G. and B. and of T. daughter and heir of the same R. and of VV. son and heir of the same T. and M. son and one of the heirs of the same VV. which those two parts, and the said part with K. daughter and other heir of the foresaid VV. together held, and of D. daughter and heir of the same M. and the aforesaid K. aunt of the aforesaid D. and F. daughter of the same K. to the foresaid I. daughter of the foresaid F. and cousin and heir of the foresaid D. ought to descend by form of the gift aforesaid, &c.

And by that writ, it seems, That I. is seised of the third part of those rents, and bringeth his Writ of two parts of that Rent.

And

B And there is another writ of *formedon* and *inſimul tenuit*, where he ſhall make his demand by the name of the moity, and that is where one Coparcener is deforced of her part, and the other Coparcener is in poſſeſſion of her part, and the Writ is ſuch.

Com. the Abbot of Weſt. *that &c. he render* B. *and* I. *his wife the moity of thirty ſhil. rent, and the rent of one thouſand white loaves of the price of ten ſhillings, and of five flagons of ale of the price of ten pence, &c. with the appurtenances in the ſame City of* Weſt. *which together with another moity of the ſame 30 s. rent, and of the rent of bread and ale, with the appur. in the ſame City, A. gave to* G. *and* B. *his wife, and to the heirs of the body of the ſame* G. *and* B. *iſſuing, and which after the death of the foreſaid* G. *and* B. *and of* F. *ſon and heir of the ſame* G. *and* B. *and of* T. *daughter and heir of the ſame* F. *and* W. *ſon and heir of the ſame* T. *and of* R. *daughter and one heir of the ſame* VV. *who that and the foreſaid other moity with* M. *daughter and other heir of the foreſaid* VV. *and of* E. *ſon of the ſame* R. *the foreſaid* I. *daughter of the foreſaid* E. *and couſin and heir of to the foreſaid* R. *ought to diſcend, &c.*

C And it appeareth by that Writ, that one Coparcenor ſhall have the writ of formedon in the *Inſimul tenuit* againſt a ſtranger upon the poſſeſſion of his anceſtor without naming the other coparcenor who hath her part in poſſeſſion.

And if a man do bring a Formedon in the Diſcender upon the ſeiſin of his brother, and as heir to his brother; he ſhall not mention in the Writ, that his brother is dead without iſſue: but if a man bring a formedon in the Diſcender as couſin and heir to him, he ought to mention in the Writ how he is couſin and heir to him, and he ought to make himſelf heir unto him who was laſt ſeiſed, and that by the ſame Writ.

D And a man ſhall have a Formedon in the Diſcender upa gift in tail made before the Statute of *Donis*, if the alienation be made after the Statute, and not before.

And if lands in tail deſcend to two coparceners, and one E entreth into the whole, and the other hath iſſue, and dyeth, and ſhe which entreth into the whole, dyeth without iſſue, the iſſue of the other coparcenor ſhall have ſeverall Writs of Formedon, one of the ſeiſin of the grandfather, and in that writ he ſhall not ſay *Inſimul tenuit*, &c.

becauſe

becauſe her mother was never ſeiſed but of the other moity of the Land of the ſeiſin of her aunt, the writ ſhall ſay, *Qui inſimul tenuit* with her mother, for that ſeiſin was a ſeiſin to her mother, if ſhe would, &c. And if one Coparcener after the death of the Anceſtor enter into the whole, and alieneth in fee, and dieth without iſſue, the other Coparcener ſhall demand the moity as heir unto her father, and the other moity as heir unto her ſiſter. F

And if the heirs in tail of Gavel kind, bring a Formedon in the Diſcender, the Writ ſhall be of common form, as the writ of Formedon brought by Siſters, and in the Count he ſhall ſhew the Cuſtome, A
[217]

A Formedon ſhall be brought of a Gorſ. but not of an Advowſon, B

And if Tenant in tail be indebted to the King in the Exchequer, and dyeth; and his heir entreth into the Lands, and is diſtrained in the entayld Lands for the Kings debt; Now if the Fathers executors have aſſets or Goods, or if the father hath lands in fee-ſimple in the hands of others, which he hath aliened; the heir in tail ſhall have a ſpecial Writ unto the Treaſurer and Barons of the Exchequer; rehearſing the whole matter; commanding them that they do enquire thereof; and if it be true, that they do ſurceaſe to charge him upon the entailed Lands, and the writ is ſuch.

The King to his Treaſurer and Barons of the Exchequer, greeting, R. the ſon of I. of W. hath ſhewn to us, that although he holdeth not the Lands or Tenements of the foreſaid I. which were beſides 12. *Meſſ. and* 11 *carves of land in T. with the appurtin. which the foreſaid I. and* C. *his wife, mother of the aforeſaid R. whoſe heir he is, held to them and the heirs of the bodies of them* I, *&* C. *iſſuing of the gift and grant of* H. *of* C. *by a fine thereof in the Court of the* E. E. *&c. our grandfather levied, and which after the death of the foreſaid I. and* C. *to the hands of him* R. *by vertue of the fine foreſaid came, you notwithſtanding him R. in the Lands and Tenements foreſaid which thus are held in fee-tail, for one hundred pounds to us for*

for arrearag. of the extent of the Manor of Osford *to the foresaid I. by you after that the government of our Realm we took upon us, and the foresaid ten. to the said I. and C. in fee-tail so given, and granted were, commit. to render, omits as well the aforesaid heirs of the aforesaid, as the tenants of the lands and Tenants of him I. which were in fee-simple, who to his debts ought to be charged, and sufficient have whence those debts may be levied you distrein, and him on that occasion disquiet many wayes, and grieve less justly, &c. whereupon he hath supplicated us to provide him a remedy, we not willing that the foresaid R. should be injured in this part, command you, that if it can lawfully appear to you, that the Mes. and Lands foresaid to the foresaid I. and C. in the form foresaid given and granted were, and that he R. any other lands or tenements, which were his the aforesaid I. besides the same Mes. and Land, which to his hands by vertue of the fine came not to hold, and the said heir or tenant foresaid suffic. to have, whence the said debts may be levied, as foresaid is; then the foresaid R. of the foresaid hundred pounds towards us to be discharged, and quite to be cause ye, those who of right ought to be discharged, as it shall be just charging. witness, &c.*

And by that writ it appeareth that if the heir, or the other Ter-tenants were not sufficient for to pay the debt that the lands which the heir hath in tail shall be charged; for some say that the King is not bound by the Statute of *Donis*, &c. but that he is in the same case he was before; *Quære* thereof.

And if a man do alien his lands in fee, and afterwards become indebted to the King, &c. If the alienee be distreined for that debt, he shall have a special writ to the Treasurer and Barons of Exchequer, rehearsing the whole matter, commanding them for to surcease &c.

And so if a man be distreined for a debt or duty due to the King, as executor, or as pledge for him who is the Kings debtor, he shall have a special writ unto the Treasurer and Barons of the Exchequer, to enquire thereof, and to do right.

Writ of Formedon in the Remainder.

THe Writ of *formedon in the Remainder* lyeth, where a man giveth lands to one in tail, the Remainder unto another in Tayl, and afterwards the firſt Tenant in tayl dyeth without iſſue of his body, and a ſtranger doth abate and deforceth him in the Remainder; he in the Remainder or his heir, ſhall have that writ of Formedon in Remainder. And ſo if the firſt Tenant in tail alieneth in fee, and dyeth without iſſue of his body begotten, He in the Remainder in fee, ſhall have a Writ of Formedon in the Remainder to recover his Eſtate, &c.

And if a man giveth Lands for term of life, the rem. to another, and the heirs of his body begotten, and the Tenant for life dyeth, and a ſtranger abateth and deforceth him in the Remainder that he cannot enter, he in the Remainder, or his heir ſhall have a Formedon in Rem. to recover his Eſtate, &c.

So if a man make a Gift in tail, the Remainder in Fee to another, and the Tenant in Tail alieneth in Fee or in Tail, or for life, and dyeth without iſſue, he in the rem. in Fee: or his heir ſhall have a Writ of Formedon in rem. to recover that land.

And it ſeemeth the ſame Law ſhall be, if a man *Leaſe* lands for term of life, the Remainder to another in fee, and the Tenant for life doth alien in fee, or in tall, or for Life, and dyeth, and a ſtranger abateth and deforceth him who ought for to have the Remainder: then he in the Remainder, or his heir, ſhall have a Formedon in the Remainder to recover that Land: *Quod vid. 24. E. 3.*

And that appeareth to be but reaſonable, becauſe hee hath right for to have the Land, and then it is but reaſon that he have an action for to recover the ſame; And that appeareth by the Stat. of Weſt 2 c. 24. which willeth, *That as oft as hereafter it ſhall happen in Chancery, that in one caſe is a Writ found, and in the like caſe falling under the ſame right,* [218] *and wanting the like remedy; Let the Clerks in the Chancery agree in making a Writ*; for which it ſeemeth that ſuch writs are granted.

And alſo upon the Statute of *Donis conditionalibus*, there A is

is not the Writ of Formedon given by expreſs words, but a Writ of Formedon in the Diſcender; but yet it was never doubted, But that if a man make a Leaſe for life, the Remainder in tail to another, that he in the remainder in Tail, or his heir ſhould have a writ of Formedon in the Remainder, after the death of the Tenant for life, if he were deforced of the Land; and that is by Equity of the ſtatute of *Donis* as it ſeems; For no Formedon in the Remainder is given by any Statute; and therefore it ſeems it ſhall be taken by Equity of the Statute, yet ſome have doubted thereof; and the form of the Writ for him who claimeth the Remainder in feeſimple, after the Eſtate tail determined, is ſuch.

The K. to the Sheriff, &c. command A. that &c. he render B. one Meſ. 20 acres of land, &c. which C. gave to D. and the heirs of his body iſſuing; ſo that if the ſame D. ſhould dy without heir of his body iſſuing, the foreſaid Meſ. and 20 acres of Land, with the appurtin. to the foreſaid B. and his heirs ſhould remain: and B: that after the death of the foreſaid D. to the foreſaid B. they ought to remain, by form of the Gift foreſaid; becauſe the foreſaid D. dyed without heir of his body iſſuing, as he ſaith, and unleſs, &c. then ſum.

And for the heir of him upon whom the Remainder was entailed: thus,

And which after the death of the foreſaid D. and B. to the foreſaid I. ſon and heir of the foreſaid B. ought to remain, by form &c. becauſe the foreſaid D. dyed without heir of his body iſſuing as he ſaith, and unleſs, &c.

And if a Leaſe be made for term of life, the Remainder unto another, and unto the heirs of his body begotten; Now after the death of Tenant for life, if he in the Remainder be deforced of the Land, by abatement of a ſtranger; Then he ſhall have ſuch writ:

Which A. gave to B. for the life of him B. ſo that after the death of the ſame B. the foreſaid Meſſu. and xx. acres of Land, with the appurtenances to D. and the heirs of his body iſſuing ſhould remain, and which after the death of the foreſaid B. and D. to the foreſaid W. ſon and heir of the ſame D. ought to remain by form, &c.

And if a Reverſion be granted unto another in tail; and the Tenant for life dyeth ſeiſed, and a ſtranger abates and enters

enters the Land; the Grantee in Reverſion ſhall have a D
Formedon in ſuch form:

Which G. gave to T. for the life of him T, and which the ſame G. after granted to the foreſaid M. and P. ſometime her husband, to have after the death of the aforeſaid T. to the foreſaid P. and M. and the heirs of the body of them P. and M, iſſuing, and which after the death of the foreſaid T. to the foreſ. M. ought to remain, by form of the grant foreſ. as he ſaith, &c.

2 & 3 Ma. Dyer 125. 6 E. 3. 5.

And if A. give a mannor except 13 s. 4d. rent to R. and E
I. his wife, and to the heirs of their two bodies begotten and the rem. to one I. in fee, and afterwards R. aliens an houſe and one acre of Land to one man, and 3 acres to another, and 2 acres of Land to a third perſon, and the reſidue of the Manor unto one B. in Fee, except the rent of 13 s. 4 d. and afterwards the husband and Wife dye without iſſue betwixt them; He in the remainder ſhall have ſuch Writ againſt the alienee.

Command D. that &c. he render to the Manor of F. with the appurtenances, except one Meſ. ſix acres of Land, and thirteen ſhillings four pence of rent in the ſame Manor, and command G. &c. that he render to the ſame I. one Meſ. and 10 acres of land with the appurtenances in F. and command T. that &c he rend. to the ſame I. two acres of Land with the appurt which A. gave to R. and I his wife, and the heirs of the bodies of them R. and I. iſſuing, ſo that if the ſame R. and I without heirs of their bodies, &c. ſhould dy, the foreſ. Meſ. ſix acres of Land, and the Mannor, except one Meſſ. ſix acres of Land, and the Rent foreſaid, to the foreſaid I. and his heirs ſhould remain, &c.

And by that it appeareth, That a man ſhall have a writ of Formedon in Remainder againſt ſeveral Tenants by divers *Præcipes* in one Writ.

And if a man leaſe lands for life, the remainder in tail, &c, the remainder over in fee to another, and the Tenant for life dieth, and the tenant in tail alieneth in fee, and afterwards the alienee doth alien two parts of the land to one Tenant, and the third part of the land to another Tenant, and then the Tenant for life dieth, and then the Tenant in tail dieth without iſſue; He in the remainder in fee, ſhall have a Formedon in the remainder in ſuch form.

Com-

Command A. *that, &c. he render* B. *two parts of one Meſſuage, with the appurtenances in* N. *command* F. *that, &c. he render to the ſame* B. *the third part of one Meſſuage, with the appurtenances in the ſame Town, which* D. *gave to* C. *for the life of him* C. *So that after the death of him* C. *the foreſaid two parts, and third part to* F. *and to the heirs of his body iſſuing, ſhould remain; and if the foreſaid* F. *without heir of his body iſſuing ſhould die, the foreſaid two parts, and third part to the foreſaid* B. *and his heirs ſhould remain, and which after the death of the foreſaid* C. *and* F. *to the foreſaid* B. *ought to remain, by form of the gift foreſaid, becauſe the foreſaid* F. *died without heir of his body iſſuing, as he ſaith, and unleſs, &c.*

And by that appeareth how that he ſhall have one Writ by ſeveral *Præcipes* againſt ſeveral Tenants.

F If a man leaſe to one twenty acres of Lands for life, and dieth, and the Reverſion deſcendeth to his brother, and he dieth, and the Reverſion deſcendeth to his two ſiſters, and they do make partition of the Lands, and ten acres are aſ- [219] ſigned to one ſiſter to have to her and her heirs, and the other ten acres are allotted to the other ſiſter and her heirs; and one of the Coparceners grants the reverſion of her part and ten acres to a man and his wife, and the heirs of their two bodies begotten, and afterwards the Tenant for life dieth, and a ſtranger doth enter and abate in the Land; the husband and the wife who are in the Remainder, ſhall have a Writ of *Formedon* in the Remainder in this form.

Command R. *of* N. *that he render* R. *and* A. *his wife ten acres of Land, with the appurtenances in* R. *which together with other ten acres of Land, with the appurtenances in the ſame Town,* R. *of* S. *gave to* W. *for his life, and which* M. *of* B. *ſiſter, and one of the heirs of* N. *of* S. *brother and heir of the foreſaid* R. *of* S. *to which* M. *the Reverſion of the foreſaid ten acres of Land aſſigned was for her* Purparty, *her of the foreſaid twenty acres of Land by partition betwixt her and* Lucy, *ſiſter and other heir of the foreſaid* N. *of* S. *thereof made after the death of the foreſaid* W. *continuing granted to the foreſaid* R. *and to the heirs of the bodies of them* R. *and* A. *iſſuing, after the death of the ſame* W. *to have, and which after the death of the ſame* W. *to the foreſaid* R. *and* A. *ought to remain by form of the grant foreſaid, as they ſay; and unleſs he ſhall do it, and the foreſaid, &c.*

And if he who hath the Remainder, or his heir be once A
ſeiſed of the Lands by force of the Remainder, then he ſhall never have a Formedon in Remainder for that Land, but a Formedon in Diſcender, becauſe the Remainder is once executed. And no Tenant ſhall have a Formedon in Diſcender, nor in Remainder, where he is once in poſſeſſion by force of the Intail, or by force of the Remainder; for after that he hath poſſeſſion of the Land by force of the Tail, or by force of the Remainder, if he be put out, he ſhall have an Aſſiſe of Novel Diſſeiſin, or a Writ of *Quibus*, in the nature of an Aſſiſe, *&c.*

If a Remainder be given unto two or three heirs and one B
dieth, and the other ſurviveth, and afterwards dieth, his his ſhall have a Formedon in the Remainder, as heir to him, without mentioning in the Writ that he ſurvived the other Joyntenant, *&c.*

And in a Formedon in the Remainder, he ought for C
to ſhew the Deed thereof, if the Demandant do require Oyer of the Deed; but in the Count, he ſhall not ſpeak of any Deed; but the Tenant ought for to demand Oyer thereof, and then the Demandant ſhall ſhew the ſame, and in the count ſhall not mention the Deed.

And if the Remainder be once executed in the Writ D
of Formedon in the Diſcender, he ſhall never mention that Remainder, but the General Writ of Formedon ſhall ſerve in that caſe, as appeareth by the rule in the Regiſter.

Writ of Formedon in the Reverter.

THe Writ of Formedon in the Reverter lieth where one E
giveth Lands to a man in tail, or in a frankmariage with his daughter, and afterwards the Donee or his heirs dieth without iſſue of his body; then the Donor or his heirs may bring a Writ of Formedon in the Reverter againſt him who is Tenant of the Lands ſo given.

See before 218 Dyer. 2 E 3. Ma. Dyer 295. 6 E. 3. 5.

And ſo if one man giveth Lands unto another in tail, and the Donor granteth the Reverſion in Fee unto another, and then the Donee in tail dieth without heir of his body

body, the Grantee of the Reverſion ſhall have a Writ of Formedon in the Reverter to recover that Land; but if he grant the Reverſion unto another in tail, and then the Donee dieth without heir of his body, then that Grantee of the Reverſion ſhall have a ſpecial Writ, as appeareth before, amongſt the Writs of Formedon in the Remainder, and for the heir of the Donor; the form of the Writ is ſuch.

Command A, &c. that he render B. one Meſn and twenty acres of Land, with the appurtenances in G. which C. Father of the foreſaid B. whoſe heir he is, gave to I. and E. his wife, and the heirs of their bodies iſſuing, and which after the death of the foreſaid I. and E. to the foreſaid B. ought to revert by form of the gift foreſaid, becauſe the foreſaid I. and E. are dead without heirs of their bodies iſſuing, as he ſaith; and unleſs, &c. V. 4 Eliz. Dyer 216. 12 H. 6. 36.

F And if Lands be given in tail, the Remainder to another in tail, and afterwards the firſt Tenant in tail dieth without iſſue, and the ſecond Tenant in tail in the Remainder doth enter into Religion, and is profeſſed; the Donor or his heirs ſhall have ſuch Writ of Formedon in the Reverter. *Which C. Father of D. whoſe heir he is, gave to F. and the heirs of his body iſſuing; ſo that if the ſame F. without heir of his body iſſuing ſhould die, the foreſaid Meſſuage, &c. to H. and the heirs of his body iſſuing ſhould remain, and which after the death of the foreſaid F. and after the foreſaid H. the habit of Religion aſſumed, to the foreſaid D. ought to revert by form of the gift foreſaid, becauſe the foreſaid F. died without heir of his body, and the foreſaid H. in the habit foreſaid profeſſed is, without heir of his body iſſuing, &c. and unleſs, &c.*

G And if *C.* give Lands in tail to *E.* and to *F.* his wife, and unto the heirs of their two bodies begotten, and the ſaid *C.* hath iſſue *G.* and *B.* and dieth, and afterwards *G.* dieth, and *B.* granteth the Reverſion to *H.* for life, and afterwards *E.* dieth and *F.* dieth without iſſue of their bodies, *&c. B.* ſhall have a Formedon in the Reverter in this form.

Which C. gave to E. and F. his wife, and the heirs of their bodies, &c. iſſuing, and which G. ſon and heir of the foreſaid C. Brother of the foreſaid B. whoſe heir he is, after the

death of the foreſaid E. *granted to* H. *for his life, after the death of the foreſaid* F. *to have, and which after the death of the foreſaid* F. *and* H. *to the foreſaid* B. *ought to revert by form*
[220] *of the gift and grant foreſaid, becauſe the foreſaid* E. *and* F. *are dead without heirs of their bodies iſſuing, &c.*

And it ſeemeth in that caſe, that if *H.* had ſurvived *F.* and had entred into the Land, and had been ſeized of the Land for term of his life, and then had died, that then the ſaid *B.* ſhall not have a *Formedon* in the Reverter, but a Writ of *Entre ad terminum quem præteriit.* But if *H.* have not entred into the Land after the death of *F.* then the ſaid *B.* ſhall have the Writ of *Formedon* in the Reverter. But if *H.* have entred into the Land after the death of *F.* and had aliened the Land in Fee, then *B.* ought to have had a Writ of *Entre in Conſimili caſu*, during the life of *H.* and after the death of *H.* a Writ of *Entre ad communem legem.*

A And if *F.* leaſe Lands unto P. for term of life, and hath iſſue a ſon and a daughter, and dieth, and the ſon granteth the Reverſion to *I.* and to the heirs of his body begotten, and afterwards the Tenant for Term of life dieth, and the Tenant in tail dieth without iſſue, *&c.* and then the ſon who was Donor, dieth, the daughter ſhall have a *Formedon* in the Reverter in this form: *Which* F. *gave to* P. *for his life, and which* T. *ſon and heir of the foreſaid* F. *brother of the foreſaid* P. *whoſe heir he is, granted to* I. *to have, and after the death of him* P. *to the ſame* I. *and to the heirs of his body iſſuing; and which after the death of the foreſaid* P. *and* I. *to the foreſaid* P. *ought to revert by form of the gift and grant foreſaid, and becauſe the foreſaid* I. *is dead without heir of his body iſſuing, as he ſaith, &c.*

B And if Lands be given in Tail, and the Tenant in tail hath iſſue two daughters, and afterwards one of the daughters hath iſſue a daughter *B.* and the other daughter hath iſſue another daughter *C.* and afterwards *B.* hath iſſue *E.* and then all the daughters die, and then the ſaid *I.* dieth without iſſue of his body, the Donor or heir ſhall have ſuch Writ.

And

And which after the death of the foreſaid E. and F. and M. and A. daughters and heirs of the ſame E. and F. and I. ſon of the foreſaid M. and heir of the ſame M. and A. to the foreſaid J. of B. ought to revert, &c. becauſe the foreſaid I. &c. is dead without heir of his body iſſuing.

C In a Formedon in the Reverſion in his count he ought to lay the Explees in the Donor, and in the Donee.

D In a Formedon in the reverter he ought to mention the eldeſt brother who ſurvived his father, &c. becauſe he held the eſtate, although that he was not ſeiſed of the land; as if the Donor hath iſſue, two daughters and dieth, and the eldeſt ſon dyeth before he entreth into the Land. In a Formedon in the reverter brought by the youngeſt ſonne, he ought to mention the eldeſt ſon, who was his brother, becauſe he was one heir and Donee; but if the eldeſt dy in the life time of the father, then the youngeſt ſon in the writ brought by him ſhall not mention him, as heir to the father, becauſe he was never heir *in facto* to the father, but in a writ of right, which is called a *Precipe in capite*, brought by the younger ſon, as heir to his father: although the eldeſt ſon be dead in the life of the father, yet in his count he ought to make mention of the eldeſt ſon, becauſe by poſſibility he might have held the eſtate, and have been heir to his father.

E And if a man giveth lands in tail, and the tenant in tail hath iſſue and dieth, and the iſſue dyeth without heir of his body before he entreth into the land, the Donor may bring a Formedon in the Reverter, ſuppoſing that the Donee died without iſſue, &c. and that writ was awarded good, *M.* 18. *E.* 2. becauſe the iſſue was not living at the time of the purchaſe of the writ, and he cannot have a Formedon in the reverter of the ſeiſin of the iſſue, becauſe the iſſue died before he had any ſeiſin of the land.

Writ of Ejectione Firmæ.

Vide 1 & 2 *M.* Dy. 119. *Ibgraves* caſe.

F THe Writ of *Ejectione firmæ* lyeth where a man doth leaſe Lands for years, &c. and afterwards the leſſor doth

doth eject him, or a ſtranger doth eject him of his term, the Leſſor ſhall have a Writ of *Ejectione firmæ*; and the form of the Writ is ſuch.

The King to the Sheriff, &c. If A. ſhall, &c. then put G &c. B. that he be before our Juſtices, &c. to ſhow why with force and arms the Manor of L. which L. to the foreſaid A. demiſed for a term not yet paſt, hath entred, and the goods and chattels of the ſame A. to the value, &c. in the ſame Manor found, hath taken and carried away, and him A. from his Farm foreſaid ejected, and other things enormous to him done, to the grievous damage, &c.

6 R. 2. Fitz. Ejectione firmæ 2. contr.

And there is another form of Writ thus.

To ſhow why with force and arms the Manor of B. which L. to the foreſaid A. demiſed for the term of ſeven years, within that term he entred, and that a great time occupied, and him A ſo that the iſſues of the Manor foreſaid according to the form of the demiſe foreſaid, he could not take, hindred, and his goods, &c.

And in that Writ he ſhall recover his term again, if the H term be not ended, and the Proces is Attachment and Diſtreſs, and Proces of Utlagary. And *Anno* 14 *H.*7. in *Ejectione firmæ* brought againſt a ſtranger, the Plaintiff had judgment for to recover his term, and thereupon the Defendant brought a Writ of Error, and the judgement was affirmed, and Execution awarded for the Plaintiff.

And 17 *H.*8. ſuch judgment was given in the Common I Pleas, that he ſhould recover his term, and his damages.

If a man leaſe Lands for years, and afterwards ſuffer a feigned Recovery againſt him by a Writ of Entre in the Poſt, or other Writ, if he who recovereth, enter, the Termor ſhall have an *Ejectione firmæ* againſt him by force of the Statute of 21 *H.*8. 15. becauſe the Statute giveth him power [221] to retain, hold, and enjoy his term. And by that it appeareth, that he who recovereth doth wrong unto him, if he ouſt him of his term; but before the ſaid Statute, the Leſſee could not have ſuch Writ, becauſe he who recovered came in by courſe of Law.

And if a man leaſe Lands for years, and afterwards A granteth the Reverſion in Fee, and the Leſſee attorneth, now if the Grantee of the Reverſion do put out the Termor he ſhall have an *Ejectione firmæ* againſt him. And ſo B if

if the Reverſion do eſcheat, and the Lord by eſcheat eject the Termor, he ſhall have an *Ejectione firme* againſt him.

C And ſo if he in the Reverſion be a Villain, and the Lord claim the Reverſion, and afterwards eject the Termor, he ſhall have an *Ejectione firme* againſt him.

Writ of Aiel or Beſayel.

D THE Writ of *Aiel* or *Beſaiel* lieth where the Grandfather or great Grandfather was ſeiſed in his demeſn as of fee of any Lands or Tenements in Fee-ſimple the day of his death, and dieth, and a ſtranger doth abate or entreth the ſame day upon him, and deforceth the heir, the heir ſhall have that Writ of *Aiel* or *Beſaiel*, as the caſe is, and it behoveth not that the Grandfather die ſeiſed; or if he be ſeiſed the day that he died, it ſufficeth to maintain this action; and the form of the Writ is ſuch.

Note that in this Writ, a man cannot make title higher then his Beſaiel, or the Brother of his Beſaiel. 3 E. *Item*

Note Fitz. Aiel 6. 40 *E.* 3. 38. It was found by Aſſiſe, that the Anceſtor did not die ſeiſed, yet no Eſtoppel to have Colinage; for if he were ſeiſed the day in which he died, it ſufficeth.

E *The King to the Sheriff, &c. Command A. that juſtly, &c.* In Aiel the Defendant ſaid, that the Aiel had iſſue W. eldeſt ſon who ſurvived the *be render* B. *one Meſſuage with the appurtenances in* E. *of which* W. *Grandfather of the foreſaid* B. *or Grandmother of the foreſaid* B. *or great Grandfather, or great Grandmother of the foreſaid* B. *whoſe heir he is, was ſeiſed in the demean as of fee the day he died, as he ſaith, and unleſs he do it, and the foreſaid* B. *ſhall ſecure thee, &c. then ſummon the foreſaid* A *&c.*

Aiel, and committed fellony, and was abjured, and afterwards taken and in Eyre adjudged Felon, and good plea. 6 E. 3. Fitz Aiel.

F And the Proces in that Writ is Summons and *Grand cape* before appearance, and after appearance, if the Tenant make default, a *Petit cape* ſhall be awarded.

G And although that the Anceſtor go in pilgrimage beyond the Sea, and there dieth, yet the Writ of Aiel ſhall be general, as is aforeſaid. 13 E 3. Aiel 2.

And ſo if the Grandfather enter into Religion, and is

profeſſed, the heir ſhall have a Writ of *Ayel*, if the ſtranger do abate, and the writ ſhall be general, and ſhall not ſpeak of his entry into religion or of his profeſſion, &c.

21 E. 3. 10. Br. cosinage 6. In Beſaiel, the releaſe of the *Aiel* with warranty is good plea 22 E. 3. Joinder in action.

And the Aunt and the Neece ſhall joyn in a writ of *Aiel* of the ſeiſin of their grandfather, by equity of the Statute, and the Statute ſhall ſerve for thoſe dying ſeiſed before the Statute, as for thoſe dying ſeiſed ſince the Statute. H

And two Coparceners brought a writ of *Aiel*, and by their count, they did ſuppoſe the anceſtor to be great grandfather to the one, and Treſaiel to the other, and yet it was adjudged good. And the writ in the Regiſter is ſuch:

The King to the Sheriff, &c. command A. that juſtly, &c. he render B. and C. one mill, &c. of which D. the Grandfather of the foreſaid B. and great Grandfather of the foreſaid C. whoſe heir they are, was ſeiſed, &c.

Writ of Coſinage.

THe writ of Coſinage lyeth where the Treſail was ſeiſed in his demeain as of fee the day he died of any land or tenements, and dieth, and a ſtranger doth enter and abate, then his heir ſhall have a writ of coſinage. And the form of the Writ is ſuch: I

The King to the Sheriff, &c. Command A. that juſtly, &c. he render B. one meſſuage with the appurtenances in N. of which W. couſin of the foreſaid B. whoſe heir he is, was ſeiſed in his demean as of fee, the day he dyed, as he ſaith, and unleſs, &c. K

And a man ſhall have a writ of Coſinage of the ſeiſin of the brother of the treſaiel. L

22 E. 3. Brief 308. it is admitted that treſaiel is couſin.

And the heir of the Lord who was his treſaiel may have a writ of coſinage of the rent of the Seignory againſt the tenant, if he deforce him of the rent, and may count of the ſeiſin of his treſaiel; or if he will, he may have a Writ of cuſtomes and ſervices againſt the Tenant at his election. M

46 E. 3. 15. 2 H. 4. 7. 4 E. 3. *Aiel* 4.

And if a man may have a Writ of *Aiel*, he ſhall not bring a writ of *Coſinage*, and if he do, the tenant may abate the writ by pleading the ſeiſing of the great Grandfather; and alſo a man ſhall not have a Writ of *Coſinage* of the ſeiſin of his great grandfather, but ſhall be put to his writ of Beſaiel, &c. N

Nor

O Nor a man ſhall not have a Writ of *Coſinage* of the death of his uncle, becauſe he may have an aſſize of mortdaunceſter of his ſeiſin.

And *Coſinage* doth not ly between privies in blood, no more then an aſſize of mortdaunceſter, but ſhall be put to their *Nuper obiit.* 44 E. 3. 13.

P And if a treſail goeth beyond ſea and entreth into Religion, and be profeſſed; yet the writ of coſinage ſhall be general as the writ of *Aiel* ſhall be. And the proceſs is ſummons, Grand cape, and Petit cape. 14 E. 3. Coſinage 6.

Writ of ad quod Damnum.

THe writ of *Ad quod damnum* lyeth, where a man will give lands or tenements in mortmain, as to a religious houſe, or to a body politick in fee-ſimple, then he ought for to have the Kings licenſe, and the licenſe of the chief Lords to make ſuch gift or grant, and before ſuch licence be granted, the courſe is to ſue unto the King to have a licenſe to ſue that writ out of the Chancery, directed unto the Eſcheator, to inquire what dammage it would be to the King, or unto other perſons, if the King do grant ſuch licence: and upon the return of that Writ certified into the Chancery, the King ought to give leave, that he may alien or give in Mortmaine; and that inquiſition ought to be certified into the Chancery under the ſeals of the Eſcheator and of the Jurours by whom the Inquiſition was found. And the form of the writ is ſuch. [222]

A *The King to his beloved J. of K. his Eſcheator in the County of L. greeting We command thee, that by the oath of honeſt and legal men of thy bailiwick, or of thy County, by whom the truth of the matter may be better known, diligently thou inquire if it bee to the dammage or prejudice of us or others, if we grant to B. that he one meſſuage, two acres of land, and one acre of meadow, with the appurtenances in W. may give and aſſign to a certain Chaplain in divine ſervice for the ſoul of him B. and for the ſoules of his father*

father and mother, and anceſtor, and of all the faithful deceaſed, in the Chappel of Bleſſed Mary *of* W. *or in the Church parochial of Bleſſed* Mary *of* S. *every day to celebrate; to have and to hold to the ſame Chaplain and his Suceeſſors Chaplains, Divine Service in the Church aforeſaid, or in the ſame Chappel for the Souls foreſaid, every day, as foreſaid is, to celebrate for ever, or not; and if it be to the damage and prejudice of us, or others, then to what damage and what prejudice of us, and to what damage and prejudice of others, and of whom, and in what manner, and how, and of who, or of whom the foreſaid Meſſuage, Land, and Meadow are held, and by what ſervice, and in what manner, and how, and of what value they are by the year in all iſſues, according to the true value of them; and who, and how many are the Meſns betwixt us and the foreſaid* B. *of the Meſn Land, and Meadow foreſaid, and what Land and what Tenements remain to the ſaid* B. *over the gift and aſſignment foreſaid; and where, and of who or whom they are held, and by what ſervice, and in what manner and how, and what their value is by the year in all iſſues, and if the Lands and Tenements to the ſame* B. *remain over the gift and aſſignment foreſaid, will ſuffice the cuſtoms and ſervices as well of the foreſaid Meſn Land and Meadow ſo given, as of other Lands and Tenements to him retained, due to do; and all other and ſingular charges which he ſuſtaineth, and uſeth to ſuſtain, as in Suits, Views of Frank-pledge, Aids, Tallages, Watches, Fines, Ranſoms, Amercements, Contributions, and other whatſoever charges emergent, to ſuſtain. And that the ſame* B. *in Aſſiſes, Juries, and Recognitions, whatſoever may be put, as before the gift and aſſignment foreſaid he might be put, ſo that the Country by the gift and aſſignment foreſaid, in default of him* B. *more then was wont, be not charged or grieved; and the inquiſition thereupon, diſtinctly and openly made to us in our Chancery under thy Seal, and the Seals of them, by whom it was made, without delay ſend, and this Writ. Witneſs, &c.* Or thus, *So that the heirs of him* B. *in Juries and other Recognitions, whatſoever may be put, as his Anceſtors before the gift and aſſignment foreſaid have uſed to be put; ſo that the Country, &c.* as above.

By which it appeareth, that it is damage to the Country, that a Freeholder who hath ſufficient Lands to paſs upon Aſſiſes and Juries, ſhould alien his Lands in Mortmain, by which alienation his heirs ſhould not have ſufficient

cient Lands after the death of the Father, to be ſworn in Aſſiſes and Juries.

B And by the Rule of the Regiſter, If a Chaplain or a Woman will give their Lands or Tenements in Mortmain; yet in the Writ of *Ad quod damnum*, ſhall be that clauſe, And that the ſame in Aſſiſes, Juries, and other Recognit. whatſoever may be put; by which it appeareth, they ought to have ſufficient Lands, beſides the Lands to deſcend to their heirs.

C And if a Chaplain and a Layman will alien in Mortmain, joyntly by Licence, then the Writ of *Ad quod damnum* ſhall be in this form.

And that the ſame A. *and* B. *and the heirs of the foreſaid Chaplain, in Aſſiſes, Juries, &c. may be put as the ſame* A, *and the Anceſtors of him* B. *Chaplain before the gift, &c. have uſed to be put, ſo that the Country, &c. in default of him* A. *and of the heirs of the foreſaid* B. *more then was wont, be not charged.*

D And if one Abbot will give Lands or Tenements in Mortmain, to another Abbot or Prior, or Body Corporate, yet he ought to have the Kings Licence ſo to do, becauſe of the words of the Statute of Mortmain. So that the Lands and Tenements to Mortmain come not in any manner. And there he ought for to ſue a Writ of *Ad quod damnum* to enquire as aforeſaid; but in that Writ this clauſe, *And that the ſame Abbot, &c. in Aſſiſes and Juries, &c.* Nor that clauſe, *So that the Countrey, &c.* ſhall not be put in that Writ of *Ad quod damnum*. But now the common experience is, that they will not ſue the Writ of *Ad quod damnum* when they purchaſe leave to alien in Mortmain, but the uſe is, to have theſe words in the end of the Kings Patent of Licence; and this without any Writ of *Ad quod damnum*, or any other Writs, Inquiſitions, or our Mandates hereupon to be had and proſecuted. But it ſeemeth thoſe Patents are dubious, whether they be good, or no; if it be evidently proved, that ſuch Patents are unto the damage of others who are the Kings Tenants, and by which the Kings Tenants ought to have Wardſhips or Eſcheats, *&c.* and by which the King loſeth the Wardſhip of his Tenants, or that the King loſeth any advantage which he might have, if ſuch Patents were not granted. And therefore I conceive, that the beſt [223]

courſe

course is, to sue forth such writs of *Ad quod damnum*, to enquire to what damage such licenses in mortmain shall be to the King or others, so that the King be not deceived in his grant. And see a good case for the same in the title *Grants*, in the abridgement. *H.* 16. *E.* 3.

And there is another writ of *Ad quod damnum*, if it bee to the damage, &c. If the King grant to B. that he may give five houses, &c. to C. guardian of the Chappel of our Lady S. *Mary*, and to his Successors guardians and chaplains of the foresaid chappel, for the maintenance of the said Gardian, and two chaplains to do divine services in the said chappel, and in the Church of *P.* &c. in the honour, &c. and for the souls &c. A

And if the King will give licence to one to grant a rent unto an Abbot and his Successors, yet he ought for to sue forth a writ of *Ad quod damnum*, if he have not these words in parent; and this without any writ of *Ad quod damnum*, &c And the form of the Writ is such: B

If we grant to the same A. *that he one hundred marks of rent with the appurtenance of N. may give and assign to our beloved in Christ, the Abbot and Covent in N. and to the Prior and Monks in the Priory of S.* James *of* Bristol, *which is the cell of the same* Abbot *abiding, to find two Chaplains, &c. in the Church of the Priory aforesaid, to the same* Abbot *and Covent to hold, and to the Prior and Monks in the same Priory abiding, and their Successors to find two Chaplains, &c. in the Church of the Priory foresaid, as aforesaid is, every day to celebrate for ever or not. And if it be to the damage, &c. to what damage, &c. and of who, or whom the foresaid rent is held, and by what services, and in what manner, and how, and who, and how many are the mesnes, as in the first writ.* And it is not said in the writ, what the value is yearly, because a rent ought not to be extended.

And if a man sue to the King for a License to give an Advowson to two Chaplains, and to their Successors to hold to their proper use, and that they may hold the same to them and their Successors, appropriate for ever to say divine service, &c. he shall have a writ of *ad quod damnum*, to enquire, what dammage such grant would be to the King or others, and that writ appeareth in the Register. And in the writ of *ad quod damnum* the substance of C D

of the Licence, to alien in Mortmain, ought to be expreſſed.

E And if a man will exchange Lands, Tenements, or Rents with another Abbot, or Body corporate, upon the Licence granted, he ought to ſue forth a Writ of *Ad quod damnum*; and in the Writ both the Lands which are given, and the Lands which are taken in exchange, ought to be mentioned, and to enquire of them as afore is ſaid.

F There is another manner of form of *Ad quod damnum* where the King granteth a Licence unto an Abbot or a Prior, to purchaſe twenty pound Land, and afterwards one man will give Lands to the ſaid Abbot of the value of five pound, another will give him Lands of the value of forty ſhillings, and another man Lands of the value of twenty ſhillings; the form of the Writ of *Ad quod damnum* ſhall be ſuch.

The King to the Eſcheator, &c. We command thee, &c. if it be to the damage, &c. If we grant to A. *that he one Meſſuage and one Hundred acres of Land in* N. *to* B. *of* C. *that he one Meſſuage and forty acres of Land, with the appurtenances in the ſame Town, to* E. *of* F. *that he thirty acres of Land in the ſame Town may give and aſſign to our beloved in Chriſt, &c.* 2 H. 7. 6. *to have to them and their ſucceſſors in part of ſatisfaction of twenty pound of Lands and Rents by the year, which the Lord* Edward, *lately King of* England, *our Grandfather by his Letters Patents to them and their Covent, as well of their own fee, as of another, except Lands and Tenements which of him our Grandfather when held in chief, granted to purchaſe, and alſo to* I. *of* N. *that he one Meſſuage, with the appurtenances in the ſame Town, may give and aſſign to the ſame Abbot, and Covent to have and to hold to them and their ſucceſſors for ever in exchange for one Meſſuage in the ſame Town, to the ſame* I. *of* N. *by the foreſaid Abbot and Covent to be given and granted, to have and to hold to the ſame* I. *of* N. *and his heirs in exchange foreſaid, as foreſaid is for ever, or not, &c. and if it be, &c.* as above.

G And by that Writ it appeareth, that he may have one Writ for divers purchaſes to be made; and alſo that a Licence made unto an Abbot, in the time of one King, is good to purchaſe Land by, in the time of another King. v. 16 El. Plow. Com. 457. D.

There

There is another Writ of *Ad quod damnum*, where the H
King granteth to an Abbot, or to a Biſhop, Licence for to purchaſe an Advowſon, and to appropriate the ſame to him and his ſucceſſors for ever.

And another Writ where the King granteth unto an Abbot or a Biſhop Licence for to appropriate an Advowſon whereof they are ſeiſed in fee in their own right.

By which it appeareth, that a Biſhop or an Abbot could not have appropriated an Advowſon whereof they were ſeiſed in fee in their own rights, without the Kings Licence; and if they did, it was forfeited for Mortmain.

38 Aſſ. 1. Br. Mort. 20. It is no Mortmain. 21 E. 3. 18. Br. Mort. 16. & 31. It is no Mortmain, becauſe the Statute is extinct. And if an Abbot holdeth of another man by a certain I rent ſervice, the Lord cannot releaſe unto the Abbot that rent without the Kings Licence; and if he do, it is Mortmain, and the King ſhall have the rent; and therefore is the Writ of *Ad quod damnum* ordained, that where the Lord hath Licence to releaſe unto the Abbot that rent, to enquire to whoſe damage the ſame ſhall be, *&c.* as it ſhall be of Lands, *&c.*

There is another form of *Ad quod damnum*, where the A King giveth a Licence to alien Lands and an Advowſon which are holden of him *in Capite*, unto an Abbot, and that [124] he do appropriate them. And another form of Writ where B the King granteth Licence to one, to alien certain Lands, and a Reverſion of other Lands to a Chaplain in Mortmain.

And if the Villain of an Abbot or Prior do purchaſe Lands or Tenements in Fee, the Abbot or Prior cannot enter into them without the Kings Licence; and if he do, it is Mortmain. And it ſeemeth that the Law is ſuch, becauſe there is a Writ of *Ad quod damnum* in the Regiſter, to enquire to whoſe damage the ſame is; and if the King grant ſuch Licence unto an Abbot or Prior, that they may enter into ſuch Lands or Tenements which their Villains have purchaſed.

And ſee the Statute *De Religioſis*, how that caſe ſhall be C taken to be within the words of the Statute, or by equity of the Statute.

And it appeareth by the ſeveral forms of Writs of *Ad quod damnum* which are in the Regiſter, that the Writ ought to be made according to the Letters Patents of Licence; becauſe he ought to rehearſe the effect of the Letters Patents there-

therein; and therefore the forms of the Writs of *Ad quod damnum* do vary, as the Letters Patents themſelves do vary.

D And it appeareth by the Regiſter, that if a Manor do purchaſe Letters Patents of Licence to give Lands unto an Abbot in exchange for a Rent, which the Abbot releaſeth to him, *&c.* that he ſhall have a Writ of *Ad quod damnum* thereupon.

E And if a man do purchaſe a Licence to found a Houſe with Lands, or to make a Prebendary, and to give Lands to the ſame, *&c.* that he ought for to have a Writ of *Ad quod damnum*, *&c.* upon the ſame.

F And if a man doth deviſe Lands or Rents to his Executors and to their heirs, to diſpoſe according to his Will, and afterwards he maketh his Will, that they give the ſame in Mortmain, they ought to have the Kings Licence to make the Grant, and a Writ of *Ad quod damnum* upon the ſame, as appeareth by the Regiſter.

G If an Abbot, or a Dean and Chapter, have a Rent in Fee, iſſuing out of Lands, and the Tenant of the Land will grant by his Deed, that they and their Succeſſors ſhall diſtrain for that Rent in other Lands, it appeareth by the Regiſter, that he ought to have the Kings Licence to make ſuch Grant; and a Writ of *Ad quod damnum* ſhall be to inquire what damage or prejudice the ſame ſhall be to the King or others, *&c.* And yet it is hard to prove, how that ſhall be taken to be within the words of the Statute of Mortmain, but becauſe ſuch Grant is a good Grant of a Rent in fee, although that there were not ſuch Rent before to the Abbey, or Dean and Chapter. It ſeemeth that the Grant made without Licence, ſhall be as a new Grant in Law. 9 H. 6. 9. 41 E. 3. 15. 9 H. 6. 9. 1 Aſſ. 10. Br. Aſſ. 105.

H There is another manner of Writ of *Ad quod damnum*, and that is, where the Kings Tenant will alien his Lands which he holdeth of the King to another in fee, or in tail, or for life, then by the courſe of Law he ought to have the Kings Licence by his Letters Patents ſo to do, and before the alienation be made, the King ought to be certified by a Writ of *Ad quod damnum*, what damage or prejudice that alienation ſhall work to the King; but at this day that Writ is not uſed to be granted, but onely the Licence to alien without regard to any Writ of *Ad quod damnum*, to enquire thereof. But yet ſuch Licence muſt not be allowed of by the

the Juſtices when the ſame is ſhewed, without bringing a Writ out of the Chancery unto the Juſtices, which is called *Quod permittat, &c.* for which ſee *M.* 33 *H.*6. in title, *Fines*; and the form of the Writ of *Ad quod damnum* is ſuch.

The King to the Eſcheator, &c. We command thee, &c. to inquire if it be to the damage or prejudice, &c. if we grant to I. *that he of his Manor of* N. *with the appurtenances which is held of us in cheif, may infeoff* P. *to have and to hold to him and his heirs, of us and our heirs, by the ſervices therefore due and accuſtomed for ever, or not; and if it be to the damage or prejudice of us or others, &c. and what prejudice of others, and of whom, and in what manner, and how, and if that Manor be held of us in cheif as aforeſaid is, or of another; and if of us, then by what ſervice, and in what manner, and how; and what the value of the foreſaid Manor is by the year, in all iſſues, according to the true value of the ſame; and if any Lands and Tenements remain to the ſame* I. *over the Manor foreſaid; then what Lands and Tenements, and where, and of who, or whom they are held, whether viz. of us, or of another; and if of us, then by what ſervice, and in what manner, and how; and if of another, then of who or of whom, and by what ſervice, and in what manner, and how, and what the value is by the year in all iſſues, and the inquiſition thereupon diſtinctly and openly, &c.*

And if the King will grant a Licence unto his Tenant who holdeth of him *in Capite*, to alien unto another in fee, and to take back an eſtate unto him and his wife, and unto the heirs of their two bodies begotten, from the ſame alienee; and for default of ſuch iſſue, the Remainder unto another in Fee-tail; and for default of ſuch iſſue, the Remainder to the right heirs of the firſt Donee, he in that caſe ſhall have a Writ of *Ad quod damnum, &c.* to enquire, *&c.* and yet ſuch Writs are not uſed to be granted upon ſuch Licence.

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There is another Writ in the Regiſter, that if the King's A Tenant doth alien his Lands, of which a woman holdeth part in dower for term of her life, & another holdeth other parcel

parcel thereof for term of her life, and he himſelf holdeth the reſidue in fee: Now he ſhall have a Writ of *Ad quod damnum*, rehearſing all the Eſtates, and the Licence.

B If the King granteth Lands to one for life, and afterwards granteth the Reverſion to *D.* in fee, and then *D.* dieth, and his heir granteth the Reverſion to *R.* and *W.* in fee, and afterwards *R* and *W.* grant the Reverſion to *M.* for life; and all thoſe grants are made without Licence, and afterwards *M.* ſueth to have a Licence, that ſhe may enter after the death of the firſt Tenant for life; ſhe ſhall firſt have a Writ of *Ad quod damnum*, to enquire, *&c.* and the Writ ſhall be ſuch.

The King to his beloved Clerk of C. *his Eſcheator in the Council of* S. *Greeting.* M. *hath ſupplicated, that whereas* A. *lately granted, that one Meſſuage with the appurtenances in* N. *which of us is held in chief, as is ſaid, and which* I. *and* B. *his wife hold for the life of her* B. *of the demiſe of the foreſaid* A. *which alſo after the death of her* B. *to the foreſaid* A. *and his heirs ought to revert, after the death of the ſame* B. *to* D. *and his heirs ſhould remain, and* F. *ſon and heir of him* D. *farther grant, that the Meſſuage foreſaid, with the appurtenances which to him* F. *and his heirs, by reaſon of the grant, and attornment to him in this plaint, made after the death of her* B. *ought to revert after the death of her* B. *to* R *and* W. *and their heirs ſhould remain, and the ſame* R. *and* W. *granted, that the Meſſuage foreſaid, with the appurtenances, which to them* R. *and* W. *and their heirs, by reaſon of the grant, and Attornment foreſaid, to them of the premiſes made, after the death of her* B. *ought to revert, after the death of the ſame* B. *to the foreſaid* M. *for his life ſhould remain; ſo that after the death of her* M. *that Meſſuage, with the appurtenances after the death of her* B. *to* K. *and the heirs of him* K. *ſhould remain. Our Licence hereupon not obtained, we will grant to the ſame* M. *that ſhe that Meſſuage, with the appurtenances after the death of her* B *may enter, and hold for her life of us, and our heirs by the ſervices therefore due, and accuſtomed; ſo that after the death of her* M. *the foreſaid Meſſuage, with the appurtenances to the foreſaid* K. *and the heirs of him* K. *ſhould remain, to be held of us by the ſervices aboveſaid for ever. We by you willing to be certified, if without damage or prejudice to us, or any other whatſoever we may yeeld to the ſupplication foreſaid, in this part. We command you that by the oath, &c. as above to, or of others, if we grant to the foreſaid* M. *that ſhe the Meſſuage foreſaid, with the appurte-*

nances after the death of her B. may enter and hold in the form foresaid, or not; and if, &c. as before.

And by that it appeareth, that an *Ad quod damnum* shall be awarded, where the King granteth a Licence unto one for to enter into the Land, which Land the King might for a fine for alienation; and also it doth appear by that Writ, That a Clerk and a Chaplain was then Escheator of the County.

And if B the Kings Tenant doth alien to *A* in Fee, and C afterwards *A.* giveth back the same Lands to the same *B.* and *C.* his wife in tail, and then *A.* dieth, and then *B.* dieth without heir of his body, and afterwards *D.* Brother and Heir of *A.* doth release all his right in the Land unto *C.* who was the wife of B. in fee without the Kings Licence, if the King will pardon that Trespass for making of that Release. A Writ of *Ad quod damnum* shall be awarded to enquire what damage or prejudice the same shall be to the King, and the Writ appeareth in the Register; but such Writs are not used to be sued forth at this day, but such pardons are allowed for the Terre-tenant, without any such Writ of *Ad quod damnum, &c.* But yet if the King be damnified by any such pardon in any point whereof, he had not notice; whether the same shall make void the pardon, or not. *Quare.*

And if the King will grant to one to make a Ditch of a D certain length in his own Land, next to the Kings Pond adjoyning to draw the water from the Pool by the ditch to his Mill, rendring yearly to the King and his heirs, a certain Rent, a Writ of *Ad quod damnum* shall be awarded for to enquire what damage the same shall be to the King; and the Writ shall recite the Grant, and the Rent reserved.

And if there be an ancient Trench or Ditch coming E from the Sea, by which Boats and Vessels use to pass to the Town, if the same be stopped in any part by outragiousness of the Sea, and a man will sue to the King to make a new Trench, and to stop the ancient Trench, *&c.* they ought first to sue a Writ of *Ad quod damnum*, to enquire what damage it will be to the King, or others:

And if the King will grant to any City the Assise of F Bread and Beer, and the keeping of weights and measures, an *Ad quod damnum* shall be first awarded, and when the same is certified, *&c.* then to make the Grant.

And

And it appeareth by the Regiſter, that upon every grant to be made by the King, of Lands, Tenements, Liberties, or other things, that a Writ of *Ad quod damnum* ſhall be firſt directed to the Eſcheator, to enquire what damage it will be to the King, or others, and in thoſe Writs in the Regiſter, appear notable forms of Grants made in divers manners; for in every Writ the manner of the Kings grant, and the effect thereof is ſpecified and recited in the Writ of *Ad quod damnum*.

A And if a man will give Lands unto the King in Fee, unto the intent that the King ſhall give them to a Religious Houſe; yet a Writ of *Ad quod damnum* ſhall be directed to the Eſcheator to enquire what damage that ſhall be to the King, or others, if the King ſhould accept thereof, and give the ſame to the Religious Houſe. [226]

B And if the King ſeiſeth Lands aliened in Mortmain, and afterwards will give them again to the Abbot, *&c.* in fee, yet a Writ of *Ad quod damnum* ſhall be awarded, to enquire to whoſe damage it ſhall be *&c.*

And ſo if an Abbot purchaſeth Lands without Licence, and afterwards the King will pardon him for the purchaſe, and grant that he may retain and keep the Lands, yet an *Ad quod damnum* ſhall iſſue to enquire, *&c.*

C And if the Kings Tenant doth alien without Licence, for which the King ſeiſeth the Lands: If the King will reſtore the Lands, and pardon the treſpaſs, yet the Writ of *Ad quod damnum* ſhall iſſue forth to enquire what damage it is to the King, and if he made ſuch grant; but that is not in uſe at this day; but to pay a fine, and upon the Licence to enter, without ſuing ſuch Writ.

If the King be Lord, and there be Meſn and Tenant, and the Tenant holdeth of the Meſn by homage and twenty ſhillings, and the Meſn holdeth of the King *in Capite*, and afterwards the Meſn doth releaſe unto the Tenant the twenty ſhillings to hold to him and his heirs by homage, and one penny without the Kings Licence, the King may ſeiſe thoſe ſervices; and if he will by his grant make reſtitution to the Tenant Peravail, an *Ad quod damnum* ſhall be granted, to enquire to whoſe damage, *&c.*

D And it appeareth by the Regiſter, that if the Kings Tenant doth intrude after the death of his Anceſtor,

without ſuing his Livery; if the King will pardon the intruſion, yet a Writ of *Ad quod damnum* ſhall iſſue to enquire to whoſe damage the Kings pardon ſhall be, *&c.*

If a Foreſter of one of the Kings Foreſts, who holdeth his Office of the King, granteth the ſame to another, he ought to have the Kings Licence, and before ſuch Licence ſhall be granted, a Writ of *Ad quod damnum* ſhall iſſue what damage ſuch Licence ſhall be to the King. E

And ſo if the King will Licence one to cut down his Trees, or his Wood in his Foreſt, and to make aſſart of the Wood, or to put it to tillage, a Writ of *Ad quod damnum* ſhall be awarded, as appeareth by the Regiſter. F

And if the King will grant parcel of his Waſte within his Foreſt to another in fee, rendring Rent; and that the Feoffee may encloſe the ſame with a Hedge or Ditch, *&c.* A Writ of *Ad quod damnum* ſhall be awarded to enquire to what damage of the King, or others, the ſaid Grant ſhall be. G

And if he will leaſe the ſame for years, rendring rent, a Writ of *Ad quod damnum* ſhall be awarded to the Keeper of the Foreſt, to what damage of the King, or of his Foreſt the ſame ſhall be.

And if the King will grant part of his free Chaſe to one in Fee, rendring rent; and that he may incloſe the ſame with Hedg and Ditch *&c.* a Commiſſion ſhall be directed to certain perſons, to inquire to what damage to the King or others, the ſame ſhall be, *&c.* And thereupon a Writ ſhall be directed to return the Enqueſt and Panel, before the Commiſſioners at a certain day, aſſigned by the Commiſſioners; and the Commiſſioners ſhall make a Precept to the Sheriff to do the ſame, and to return the Writ at a day appointed by them by their precept.

And now it appeareth by thoſe Writs in the Regiſter, that in ancient times, upon every Grant, Leaſe, Releaſe, Confirmation, or Licence to be made by the King, that firſt a Writ of *Ad quod damnum* was to be awarded, to enquire of the whole truth and every circumſtance thereof, and what damage or prejudice the King ſhould have by the ſame, and upon ſuch Inquiſition certified and returned to make the Grants, Releaſes, Confirmations, or Licences, H

But

But now the experience is contrary, but in the Patents of Grants of Licence, they put in the end these words.

And this without any Writ of Ad quod damnum, *or any other Writs, or Inquisitions, or Mandates hereupon to be had, made, or prosecuted.*

But in Patents of Licences, or in a Patent of Release or Confirmation made by the Kings, those words, *Absque aliquo brevi de ad quod damnum*, in those Patents of Releases or Confirmations; but yet by reason of the ancient course and form of the Register, esteemeth that the Patents were the better if those words, *Et hoc absque aliquo brevi de ad quod damnum* were put into the Patents. *Quare*, of the rigor of the Law, what shall be done in those cases, where the Patents want those words, *&c.*

Writ of being quit of Toll.

I THe Writ to be quit of Toll lieth where the Citizens or Burgesses of any City or Borough have been quit of Toll throughout the Realm, by Grants of the Kings Progenitors, or by prescription; then if the said Citizens, or any man of the said Cities or Boroughs, come with their Merchandises unto any Fair or Market, and there sell them, or buy any Merchandise, if the Kings Officer will demand Toll of them against the Kings Charter, or against the usage or custom, then he may sue forth and have such Writ, *viz.*

The King to his Bailiffs of I. *Greeting. Whereas by our Charter we granted to the Burgesses of our Town of* S. *that they and their heirs and Successors, Burgesses of the same Town for ever, be quit of Toll through our whole Realm and Power. We command you that those Burgesses from paying Toll to you in our Town foresaid, you permit to be quit, according to the tenor of our Charter foresaid, them against the tenor of the Charter foresaid, not molesting nor grieving in any thing. Witness, &c.* [227]

A And upon that, he may have an *Alias* a *Pluries* and *Attachment* against the Bailiffs, or those that do grieve him against the Form of the Charter; and the *Pluries* is returnable in the Kings Bench, or in the Common Pleas, at the will of him who will have it.

and that Writ ſhall be the clauſe, *Vel cauſum nobis ſignifices.*

And if the King grant to be quit of Toll, if it be of the B grant of the Kings Progenitors, then the form of the Writ is ſuch.

The King to his Bailiffs of I. *Greeting. Whereas among the other liberties to our Town of* C. *by the Charter of our Progenitors, ſometime Kings of* England, *granted, it be granted to the ſame, that they and their heirs for ever, ſhall be quit of Toll through our whole Realm, which Charters by our Charter now we have confirmed: And moreover we have granted to the ſame, that although they any of the Liberties and Quittances in the ſame contained, hither to fully have not uſed, yet they, their heirs, and ſucceſſors, the Liberties and Quittances foreſaid, and every of them hereafter, without diſquiet and impediment, ſhall enjoy and uſe. We command you, &c.* as before.

But that laſt clauſe ſhall not be in the Writ, if the King C have not made ſuch confirmation to them, and upon that he may have an *Alias* and a *Pluries*, and Attachment if need be, againſt them who take the Toll. *&c.*

And the like Writ may be for thoſe who ought to be D quit of Murrage, Pontage, Picage, Laſtage, Paſſage, and the like, if they be grieved or diſturbed.

And it appeareth in the Regiſter, That King *Edward* the Firſt did grant unto Merchants, Strangers, and Aliens, that they ſhould be quit of Murrage, Pannage, and Pontage, *&c.* If they be grieved and diſturbed for the ſame, and ſhould have ſuch Writ, viz.

The King to his Collectors of Murrage, Pannage, and Pontage, in the Town of S. *Greeting. Whereas for the payments and cuſtom to us by Merchants, Foreigners, and Strangers of their Goods and Merchandizes within our Realm brought, by the Charter of the Lord* Edward *of famous memory, ſometime King of* England, *our Grandfather, which we have looked on, it is granted to the ſame, that they ſafely and ſecurely into our Realm and Power, ſhall come with their Wares, whatſoever of Murtage, Pannage, and Pontage, free and quit, as in the Charter foreſaid, more fully is contained. We command you that* E. *and his Companions Merchants of the Company, &c. Strangers of Murrage, Pannage, and Pontage, in the Town foreſaid paying, to be quit, ye permit, according to the tenor of the Charter foreſaid, thoſe againſt the tenor of the ſame Charter, not moleſting, nor grieving,*

and

and the diſtreſs if any on that occaſion ye have made, without delay releaſe to the ſame, if ought from them from the twenty day of Auguſt, the year, &c. on that ye occaſion have levied that without delay, reſtore ye W. &c.

E And if any City or Borough ought to be quit of Toll, for the Marchandiſes which they buy in another Town or place, if any of them be compelled to pay Toll, all the Corporation may bring the Writ by the name of their Corporation, and may have an *Alias* and Attachment thereupon, if need be, with theſe words at the end of the Writ. *Et diſtrichonem ſi quam eis ea occaſione fecerit, &c.* as before.

And the like Writ a man may have againſt thoſe who will compel him to pay a certain ſum of money, towards the reparation of any Bridge, of which he ought to be quitted.

F And it appeareth by the Regiſter, that Spiritual and Religious perſons ought to be quit of Toll, Cuſtoms, Murtage, Pontage, and Pannage, and of the like for their goods, and if they be troubled to pay the ſame, they ſhall have ſuch Writs.

The King to the Bailiffs of B. Greeting. Whereas perſons Eccleſiaſtick according to cuſtom heretofore uſed, and approved to pay Toll, Pannage, and Murrage, of their goods Eccleſiaſtick any where in the ſame Realm in no wiſe are bound. We command you that R. Parſon of the Church of E. to pay you Toll, Pannage, or Murrage of his goods Eccleſiaſtick in our Town foreſaid, ye diſtrain not againſt the Cuſtom foreſaid; yet ſo that no Merchandiſe they exerciſe of the ſame, and the diſtreſs if any &c. as before.

But *Herle* Juſtice ſaid, that thoſe words *Dum Merchandiſas aliquas &c.* were of no effect, becauſe by his opinion, they are acquit of all things, although they do Merchandiſe; but now the Statute of *H.* 8. is that they ſhall not Merchandiſe.

And another form of the Writ for Spiritual Perſons, is in this form.

Whereas according to cuſtom, &c. Obtain perſons Eccleſiaſtick any Toll, or any other cuſtom of their goods Eccleſiaſtick, or others for their ſuſtenance bought, ought not to pay. We command you that A. Parſon, &c. for any Toll, or other cuſtom of his goods [228] *Eccleſiaſtick ſold, or of others for his ſuſtenance there bought, in no wiſe ye diſtrain againſt the cuſtom foreſaid, and the diſtreſs, if any, &c.*

By which Writs it appeareth how Spiritual perſons ſhall be diſcharged of thoſe Tolls and Impoſitions, and Exactions for their goods, which they ſell or buy for their ſuſtenance, *&c.*

Tenants of Ancient Demeſn, by the cuſtom of the Realm, A ought to be quit of Toll; and in every Market, Fair, Town, or City, throughout the Realm; and upon that, every one of them may ſue to have Letters Patents under the Kings Seal, to all the Kings Officers, and to Majors, Bailiffs, *&c.* and the form of the Patents are ſuch.

The King to all his Bailiffs and Miniſters within our Realm of England *conſtituted. Greeting. Whereas according to cuſtom, &c. unto. Through our whole Realm, we command you, that the men of the Manor of* S. *if that Manor Ancient Demean of the Crown of* England, *be toll to you, &c. according to the cuſtom foreſaid, &c. and the Diſtreſs, if any, &c. in, &c. of which matter, &c. Witneſs, &c.*

And alſo the Tenants of Ancient Demeſn may have a Writ, directed to the Bailiffs or Major, or others who will compel them to pay toll, that they ſuffer them to go quit, *&c.* And the form of the Writ is ſuch.

The King to his Bailiffs A. *of* I, *&c. Greeting. Whereas according to cuſtom of our Realm hitherto obtaining, and approved Men and Tenants of the Ancient Demean of the Crown of* England, *are and ought to be quit from the payment of Toll through our whole Realm, you notwithſtanding the Men and Tenants of the Manor of* S. *which is of Ancient Demean of the Crown of* England, *as is ſaid, to pay you Toll of their goods and things in the ſame Town grievouſly diſtrain, and thoſe on that occaſion many ways diſquiet, leſs juſtly, to the grievous damage of them, the Men and Tenants, and againſt the cuſtom foreſaid, as from their plaint we have received, and becauſe we will not the ſame Men and Tenants to be injured in this part. We command, that if ſo it be, then from ſuch diſtreſs and diſquietings on that occaſion hereafter to be done, you deſiſting thoſe from ſuch Toll to you of their goods, and things foreſaid in the ſame Town to pay, you permit to be quit, according to the cuſtom foreſaid, and the diſtreſs, if any, &c.*

And

And by the Writ aforeſaid it doth appear, That Tenants in Ancient Demeſn ſhall be quitted of Toll, as well thoſe Tenants who hold of the Manor, which is Ancient Demeſn, which is in the Seiſin, or the poſſeſſion of another man; as of the King, as the Tenants of Ancient Demeſn, which hold of the Manor in Ancient Demeſn, which is in the Kings hands and poſſeſſion.

And it appeareth alſo, that they ſhall be quit of Toll for their Goods and Chattels which they Merchandize with others, as well as for their other goods; for the Writ is general, *Pro bonis & rebus ſuis.*

B And it appeareth, that that Writ may be ſued by all the Tenants, as a Writ of Monſtraverunt ſhall be ſued; and alſo that every particular perſon who is grieved, may ſue ſue forth the Writ if he will.

C And alſo the Lord in Ancient Demeſn himſelf ſhall be as well acquitted of Toll throughout the Realm, as the Tenants in Ancient Demeſn ſhall be, and that appeareth by the Regiſter, of an Attachment ſued by the Lord of the Manor in Ancient Demeſn againſt the Bailiffs of *C.* becauſe they took toll of him, and they ſhall not be onely quit of Toll, but alſo of Pontage, Paſſage, and the like; and alſo they ſhall not be contributory to the expences of the Knights in Parliament; and if the Sheriff will diſtrain them, or any of them to be contributory for their Lands in Ancient Demeſn, then they may ſue forth a Writ directed to the Sheriff, that they do not compel them to be contributory to the expences of the King, *&c.* Commanding them in the ſame Writ, that if they do diſtrain them, or any of them, that they redeliver the diſtreſs, *&c.* and the Writ may be ſued by all together, as a Monſtraverunt ſhall be directed to the Sheriff, or by any of them who are
D ſo diſtrained. And Tenants at Will, within Ancient Demeſn, ſhall be diſcharged of Toll as well as the Free Tenants, or Tenants for term of life, or for term of years of Lands in Ancient Demeſn, ſhall be diſcharged of Toll for their Goods, *&c.*

And ſee 7 *H.* 4. That a Tenant in Ancient demeſn may Merchandize, buy and ſell, and ſhall not pay Toll, and the ſame agreeth with the Regiſter. But *T.* 9 *H.*6. it is holden that they ſhall not pay Toll of things coming of their Tenements,

Tenements within Ancient Demeſn, nor for things brought for their ſuſtenance, *&c.* but for other things it is a queſtion; but for as much as they ſhall be quit of Pontage, Murage, and Paſſage, I conceive that they ſhall be quit of Toll generally, although they do Merchandize with their Goods: And the Toll ought always to be paid by the buyer, and not by the ſeller, if it be not by ſome ſpecial cuſtom, *&c.* E

19 H. 6 66. *Newton.*

And the Villains of Lords who come to Pontage, ſhall not be contributories to the expences of the Knights of the Counties who come to the Parliament. But the Lords ſhall have Letters in their own names, directed to the Sheriff, commanding him, commanding them, that they do not diſtrain their Villains to be contributory to thoſe expences of the Knights; and if he hath diſtrained them to deliver the ſame to the ſaid Villains. F

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And it ſeemeth reaſonable, that the Villain if he will ſue the Writ, as well as the Lord, *&c.* Which Writs do appear amongſt the Writs to be quit of Toll. A

And alſo Chaplains who are Maſters of the Chancery, who are attendants at Parliaments, ſhall not be contributory by reaſon of their Benefices, unto the expences of Proctors, made for the Clergy who come to the Parliament; and if they be, they ſhall have a Writ to the Archdeacon and his Officers, commanding them for to diſcharge them, and upon that they may have an *Alias* and a *Pluries*, and Attachment againſt them; and the Writ is ſuch.

The King to the Archdeacon of Middleſex *and his Officers, and their Commiſſioners. Greeting. Whereas in our Parliament at* Weſtminſter, *the Fourth year of our Reign, called by us, and by our Prelates, Earls, Barons, and our whole Council, there it was agreed, That our Clerks of the Chancery beneficed in our Parliaments, Councils, and Treaties, to ſerve us and the people of our Realm perſonally, being preſent to contribute by reaſon of their Benefices, to the expences of the Proctors of the Clergy of any Dioceſs to ſuch Parliaments, Councils, and Treaties coming, while in the ſame they are preſent ſhall be quit.*

We the Agreement foreſaid, whole in all things, chiefly where-

as

at the expences foreſaid, becauſe of the abſence of thoſe who at the ſaid Parliaments, &c. are not preſent, are paid, willing to be obſerved, Command you that T. *Parſon of the Church of* M. *of the Dioceſs of* London, *who is a Clerk of our Chancery, and who in our Parliament at* Weſtminſter *laſt held, in our Service and the Commonalties of the people of our Realm, preſent was, to contribute by reaſon of his Benefice foreſaid, to the expences of the Proctors, who to the ſaid Parliament for the Clergy of the ſaid Dioceſs came, or of other Proctors who to other Parliaments, &c. by us then to be held, ſhall happen to come, while ſuch ſervice he ſhall intend, by no means ye compel your Miniſters in any wiſe to be compelled, ye permit, but him from ſuch like expences quite to be ye cauſe, according to the agreement foreſaid; and if ought from him on that occaſion be levied, that to him without delay to be reſtored, and the Proces if any by the Cenſures Eccleſiaſtick, againſt him for the cauſe foreſaid, are made to be ſurceaſed; and the ſentence, if any have been thundred againſt him, without delay to be revoked cauſe ye. Witneſs, &c.*

Quere for that Statute, and by that appeareth, that the Parliament may binde the Clergy by the Acts and Statutes made in Parliament.

Writ

Writ de Libertatibus allocandis.

THe Writ of *Libertatis allocandis*, lieth where any Citi- A zen or Burgeſs, or other man is empleaded before the Kings Juſtices, Juſtices Errantes, or Juſtices of the Foreſt, and he claimeth and pleadeth any grant of Liberty made unto him by the King, or unto any City or Borough, whereof he is a Burgeſs, and the Juſtices do delay to allow that liberty, then he who is ſo delayed by the ſaid Juſtices, may ſue forth ſuch Writ directed to the Juſtices, commanding them to allow the ſame, and the Writ is ſuch.

The King to his Juſtices of the Bench, Greeting. Becauſe our Burgeſſes of N. *by the Charters of our Progenitors, ſometime Kings of* England, *claim to have divers Liberties, which they and their Anceſtors, Burgeſſes of the ſame Town, from the time of the making the Charters foreſaid, ever hitherto have uſed and enjoyed, as they ſay. We command you, that thoſe Burgeſſes of the Liberties foreſaid, before you in the Bench, to uſe and enjoy ye permit, according to the Tenor of the Charter foreſaid, as them to uſe and enjoy they ought. and they and their Anceſtors foreſaid, thoſe Liberties from the time foreſaid, ever hitherto reaſonably to uſe and enjoy, have accuſtomed. Witneſs, &c.*

And if any do claim a ſpecial Liberty to be impleaded within the City or Borough, and not out of the City, then the Writ ſhall be ſpecial, thus.

The King to the ſame, &c. Greeting. Whereas among other Liberties, which to the bettering of our Town of R. *by the Charters of our Progenitors, ſometime Kings of* England, *are granted to the Burgeſſes of the ſame Town, it is granted to the ſame, that they implead not, nor be impleaded elſwhere then within the Town foreſaid, before, &c. of the Tenures within, or the Treſpaſſes and Contracts within the ſame Borough made, as in the Charters foreſaid more fully is contained, which liberty the ſame Burgeſſes and their Anceſtors of the ſame Town-Burgeſſes*

geſſes from the time of the making the Charter foreſaid, ever hitherto reaſonably have uſed, as they ſay: You we command, that the ſame Burgeſſes the liberty foreſaid before you to uſe, and enjoy ye permit, according to the tenor of the Charter foreſaid, as they ought to uſe them, and they and their Anceſtors foreſaid from the time aforeſaid ever hitherto to uſe, and enjoy, have accuſtomed. Witneſs, &c.

And every one who claimeth any liberty, and juſtifieth by the ſame any act done by him in any Court before any manner of Juſtice or Juſtices, and the Juſtices will not allow that liberty, or delay to allow the ſame, then he may ſue forth that Writ. And thoſe Writs are of ſeveral forms, as appeareth by the Regiſter, and may be ſued by a Body Corporate, or by any ſingle perſon, as the caſe ſhall happen, *&c.* and the Barons of the Cinque Ports may ſue forth ſuch Writs, if they be delayed to have their Liberties allowed unto them. [230]

And the like Writ may be ſued to the Juſtices of the Foreſt, commanding them to allow Charters granted to any perſons, to have paſture, or to be quit of Pannage there.

Writ de Corodio habendo:

A THe Writ *De Corodio habendo* lieth where the King is the Founder in the right of his Crown, of any Abbey or Priory, or other Religious Houſe, now of Common Right the King ought for to have a Corody, and a reaſonable allowance for any of his Valets in the ſame Houſe; and ſo of every Biſhoprick in *England* or *Wales*, the King ought to have a reaſonable penſion for his Chaplain, until the Biſhop have promoted him to a convenient Benefice; and the form of the Writ for the Corody is ſuch.

So every common perſon, if he be Founder, and doth not give in Frankalmoign. 44 E. 3. 24. 50 Aſſ. 6. V. 21 E. 48. That the Kings Writ for his Valet, by his Prerogative; by which *Br.* collects, that a Founder common perſon ſhall not have a Corody. 24 H. 6. 11. If the King found a Frank-Chappel, he ſhall not have Corody, no Penſion.

The

1 E.4.10. The Writ ought to contain the Kings title to the Corody.

The King to his beloved in Chriſt the Prior and Covent of N. *Greeting. We willing our beloved Valet* S. *of fit ſuſtenance to be provided, we have thought it meet to ſend him to you, requiring that him* S. *into the houſe foreſaid, admitted to him ſuch ſuſtenance in all things, as* P *now deceaſed had while he lived, in the ſame to be adminiſtred, and to him your Letters with your Common Seal of your houſe ſigned, mention of thoſe things which in the ſame your houſe thus he ſhall receive, making hereupon to be made and de'ivered your cauſe; for which doing for us, more ſpecially we will be bound to the houſe in the future, and what thereupon at this our requeſt ye ſhall think fit to be done, write back to us by the preſent Bearer. Witneſs, &c.*

There is another form of Writ, where the King will write for the ſervants of his Grandfather or Father, thus. B

The King to the ſame, Greeting, &c. Attending the acceptable and laudable ſervices which our beloved ſervant A. *to our Grandfather, and us, hitherto hath done, willing the* A. *to whom of his ſuſtenance by them our Grandfather or Father, or us, as yet is not provided, of ſuch ſuſtenance to provide, as we are bound, him to you we thought fit to appoint, requiring that him* A. *into your houſe you admit, to him ſuch ſuſtenance in victual, apparel, and other things neceſſary as* R. *now deceaſed had, at the requeſt of our Grandfather foreſaid, of the ſaid houſe to take to be miniſtred, and to him your Letters Patents, &c. as above.*

Note, if an Abbey which a Can. perſon hath, cometh to the King by Eſcheat; yet he ſhal not have

C And ſo where the King is Founder of any Abbey or Priory of Nuns; the King ſhall have a Corody for the Queens Maidens, or other of her Coſins, for whom he pleaſeth for to write, *&c.* But if the King will write unto an Abbey of Monks, for a Maiden to have a Corody there for her ſuſtenance, *&c.* It ſeems the ſame ſhall not be obeyed, for the inconveniency thereof, but contrary if he write to a

a Corody, becauſe it is not of his Foundation. *L.* 5 *E.* 5. 118. *Br. Corody* 16, Yet the King may have a Corody where he is not Founder, but that is by ſpecial Grant: 1 *E.*4.10. 38 E.3, *Br. Contemp.* 5. 29 *H* 6. 48. If the Abbot will not admit the Kings Valet; he who ought to be admitted, ſhall recover damages, and not the King, for that the King hath onely the preſentation to the Corody, and the party the damages. 44 *E.* 3. 25. *Per Knevet.* If the King and another giveth Land to diret, *&c.* the King is Founder.

Nunnery

Nunnery for his Valet to have a Corody there. *Tamen Quære.*

D There is another form of Writ thus:

The King to his beloved and truſty, the Abbot and Covent of B. *Greeting. Willing of our Grace ſpecial our beloved Valet* R. *by pretence of his good ſervice to us done, and to be done, whom of fit ſuſtenance, &c.* as above.

E And upon theſe Writs, if the Abbot or Prior will not do according as he is directed to do by the Writ, an *Alias* and a *Pluries* ſhall be awarded, *Vel cauſam nobis ſignifices* ſhall be in the Writ of *Pluries*, and ſhall be returned into the Kings Bench. And if he do not return the ſame, an Attachment ſhall be awarded againſt the Abbot, Prior, or Prioreſs.

And if the King write for ſuch a Corody unto an Abbey or Priory, and they grant parcel of the Corody unto him for whom the King writeth, but not all, nor ſo much as others had before; then the King upon a ſurmiſe thereof, made in the Chancery, ſhall grant a Writ of *Sicut alias*, directed unto the ſaid Abbot or Prior, *&c.* deſiring them that they grant the like livelihood in all things as any other hath had before in the ſame houſe.

22 E. 4. 17, 18, 19. *Huſſey* and *Fairfax.*

If an Abbot grant to *A.* to have a Corody *nihil operatur* by the Grant.

And if the Abbot or Prior upon the *Pluries* return any matter of excuſe, wherefore he ought not to grant ſuch Corody; which return ſeemeth unto the Court where the return is made, be in the Chancery, or the Kings Bench, to be no ſufficient return, then the King ſhall grant ſuch Writ.

But if he grant Corody, or ſo much Bread and Ale, *&c.* it is a good

Grant of thoſe things, but it is no Corody, but a Profit; for every Corody hath his beginning by the Founderſhip.

The King, &c. Greeting. Whereas lately we willing our beloved N. *by pretence of long ſervice to the Lord* Edward, *late King, our Grandfather, as us hitherto done, of ſuſtenance, fit to provide, him to you have ſent, and you we have often commanded, requeſting that the ſame* N. *into your Houſe you would admit, and to him ſuch ſuſtenance, &c. you ſhould grant and Letters, &c. you ſhould make, or the cauſe to us ſignifie, why our commands to you ſo often thereupon directed, you have not obeyed, and you certain cauſes of excuſe to us into our Chancery have*

have ſent, which we inſufficient repute. You therefore we command, firmly injoyning the ſame N. into your houſe, &c.

And if an Abbot or Prior at the Kings requeſt, do F grant a Corody to *B.* for life, and afterwards *B.* will turrender the Grant of his Corody unto the Abbot or Prior, to the intent that *C.* have the ſame for his life, then he ought for to ſue a Writ to the Abbot or Prior thus.

[231] 29 E. 3. *Fines* 50. A Fine was levied of a Corody. 10 Aſſ. 11. *Br. Cor. dy* 8. *Nuper obiit* of a Corody, & dec. *De libero tento. Quod vide.* 14 H. 6. 11, 12. Aſſiſe lieth of a Corody, contrary of a Penſion.

The King to his beloved, &c. the Prior and Convocation of R. Greeting. Whereas our beloved S. who certain ſuſtenance in the Priory foreſaid, at our requeſt obtaineth, and of the will is, that our beloved Valet N. ſhall have the whole Eſtate, which the ſame S. hath in the ſuſtenance foreſaid; and to that effect the Letters Patents to him of the ſaid ſuſtenance by you made, is ready to ſurrender, as he ſaith, ſupplicates us, that we would vouchſafe to give our aſſent to this; we yeelding to the ſupplication of him, and moreover willing to the foreſaid N. fuller grace to do in this part. Command you, requeſting that if the ſame S. the ſaid Letters to the effect foreſaid will ſurrender, then receiving thoſe Letters, him N. into your houſe foreſaid, admitted to him the ſuſtenance foreſaid; for the whole life of him N. of your ſaid Houſe to be taken ye grant, and to him your Letters Patents of the ſame ſuſtenance, under the Seal of your houſe foreſaid to be made and delivered ye cauſe, and what to this our requeſt you ſhall think fit to be done, write back to us by the preſent Bearer. Witneſs, &c.

And upon that he ſhall have an *Alias* and *Pluries*, and A Attachment, if need be.

And if an Abbot or a Prior admit one to a Corody upon B the Kings Writ ſent him, if he dieth who is ſo admitted, the King may write unto another to have the ſame Corody.

But if the King have a Penſion in any Abbey or Priory for his Chaplain, if the Abbot or Prior upon the Kings Letter grant a Penſion to his Chaplain, and the Chaplain dieth; the King cannot write for or grant a new Penſion unto another Chaplain, during the ſaid Kings life, and if

24 H. 6. 11, 12.

he

he do, the Prior is not bound to grant the ſame; but it is otherwiſe of a Corody.

And yet ſome ſay, That upon the Ceſſion of any Abbot or Prior, That the King ſhall have a new Penſion granted to his Chaplain, but *Quære* of that. 14 H. 6. 12.

C And if the King have a Corody in an Abby or Priory to have certain bread, and certain gallons of Beer, &c. the D King may grant the ſame to ſeveral men: But where he hath a Corodie to have livelihood, of one man to ſet with the Servants of the Abbot, there he cannot grant the ſame but to one man onely. And the King may releaſe to the Abbot or Prior his title to the Corody, if he will. 8 E. 4. 17. ac. 14 H. 6. 11. & 12.

E And if the Abbot or Prior do receive one to a Corody upon the Kings Letter, and thereupon doth make him a grant thereof; thereby the Abbot or Prior and their Succeſſors ſhall be bound for ever. Otherwiſe it ſeemeth if the Abbot had granted the ſame upon the Kings requeſt.

F And T. 4. E. 3. it is holden, That the Abbot or Prior who holdeth of the King in *Frankalmoign*, ſhall not be chargeable with any Corody. 50. *Aſſ.* 6. 44 E. 3. 24. ac.

Writ de annua Penſione.

G AND whence the King hath a yearly penſion out of an Abby or Priory for his Chaplain, the King ſhall ſend his writ unto the Abbot or Prior, &c. to grant the ſaid Penſion to his Chaplain; and the Writ ſhall be ſuch: *The King to our beloved in Chriſt the Abbot and Covent of C. greeting, Whereas by reaſon of your new Creation to the Abbie foreſaid ye are bound to one of our Clerks whom we ſhall name, in a certain annuall penſion of the Houſe to be taken, until he be provided of a Benefice Eccleſiaſtick competent, and we the promotion of our beloved Clerk from his merits exacting it, effecting him ſuch Penſion of you to take, have thought fit to name: Therefore we command you that to the ſame A. ſuch a Penſion of the ſaid houſe in the form foreſaid to take, which may become the givers, and more ſtrongly ought to oblige the Taker, the grant your Letters Patents, with the ſeal of the Chapt. ſigned to the ſame A. hereupon to be made you cauſe, and what thereupon you ſhall think fit to be done to us without delay, write back: witneſs, &c.*

And the form of the Grant of the Penſion is ſuch: *To all to whom theſe preſent Letters ſhall come, the Abbot of T. and Covent of the ſame place greeting: Know us at the inſtance of the moſt* Illuſtrious Prince Edward *by the grace of God King of* England, *to have given and grant to our beloved in Chriſt,* A. *Clerk one hundred ſhillings ſterling, in the Feaſt of S.* Michael *yearly of our Chamber to be taken until the ſame* A. *of a Benefice competent by us be provided, and this we promiſe to do for him as ſoon as it ſhall be in our power. But the ſame* A. *by himſelf or his Atturney lawfully to this appointed, the ſaid hundred ſhillings every year at S ſhall receive, In &c. of which &c. the Common Seal of our Houſe we have put. Given in our Chapt. &c.* H

And it appeareth by an antient Roll in the Exchequer, of what Abbies or Priories, the King ought to have a Corody and Penſion, and of what a Penſion onely, and of what a Corodie only; the copy of which followeth.

The Names of the Corodies and Penſions in England, *which are of the Kings gift according to the Book in the Exchequer.*

IN the Abby of *Glaſſenbury* 1 *C.* 1 *P.* In the Abby of *Waverly*, 1 *C.* 1 *P.* In the Abby of *Malmsbury*, 2 *C.* 1 *P.*
In the Abby of *Mochelnie*, 2 *C.* 1 *P.* In the Abby of *Sleneborn*, 1 *P.*
In the Abby of *Tewkſbury*, 1 *C.* In the Abby of *Southwark*, 1 *C.* 1 *P.*
In the Abby of *Cline*, 1 *C.* 1 *P.* In the Abby of *Seuſeſter*, 2 *C.* 1 *P.*
In the Abby of *Ford*, 1 *C.* 1 *P.*
In the Abby of *Buckfaſt*, 1 *C.* In the Abby of *Stowley*, 1 *C.*
In the Abby of *Sherburn*, 1 *C.* 1 *P.* In the Abby of *Briſtiſkholm*, 1 *P.*
In the Abby of *Abbotſbury*, 1 *C.* In the Abby of *Hurley*, 1 *C.* 1 *P.* In the Abby of *Redding*, 1 *C.* 1 *P.*
In the Abby of *Bewly*, 1 *C.* 1 *P.*
In the Abby of *Shaftbury*, 1 *P.* In the Abby of *Miſſenden*, 1 *C.*
In the Abby of *Wilton*, 1 *C.* 1 *P.* In the Abby of *Glocester*, 2 *C.* 1 *P.*
In the Abby of *Worwel*, 1 *P.* In the Abby of *Langton*, 1 *P.*
In the Abby of *Hide*, 1 *C.* 1 *P.* In the Abby of *Euſham*, 1 *C.* 1 *P.*
In the Abby of *Battel*, 1 *C.* 1 *P.*

In

In the Abby of *Perchore*, 1 *C.* 1 *P.*
In the Abby of *Winchcomb*, 1 *C.* 1 *P.*
In the Abby of *Oseny*, 1 *C.* 1 *P.*
In the Abby of *Tunce*, 1 *C.*
In the Abby of *Dorchester*, 1 *C.* 1 *P.*
In the Abby of *Abingdon*, 2 *C.* 1 *P.*
In the Abby of *Evisham*, 1 *C.* 1 *P.*
In the Abby of *Godstow*, 1 *P.*
In the Abby of *Noteley*, 1 *C.*
In the Abby of *Southamp.* 1 *C.* 1 *P.*
In the Abby of *Lisfil*, 2 *C.*
In the Abby of *Shrewsbury*, 1 *C.* 1 *P.*
In the Abby of *Chester*, 1 *C.* 1 *P.*
In the Abby of *Valerial*, 1 *C.*
In the Abby of *Burton*, 1 *C.* 1 *P.*
In the Abby of *Thorney*, 1 *C.* 1 *P.*
In the Abby of *Ramsey*, 1 *C.* 1 *P.*
In the Abby of *Peterborough* 1 *C.* 1 *P.*
In the Abby of *Crowland*, 1 *C.* 1 *P.*
In the Abby of S. *Benedict* in *Norfolk*, 1 *C.* 1 *P.*
In the Abby of *Bury*, 1 *C.* 1 *P.*
In the Abby of *Tetsurth*, 1 *C.* 1 *P.*
In the Abby of *Pipwel*, 1 *C.* 1 *P.*
In the Abby of *Leicester*, 1 *C.*
In the Abby of *Newsted*, 1 *C.*
In the Abby of *Pomfret*, 1 *C.* 1 *P.*
In the Abby of *Worshore*, 1 *C.* 1 *P.*
In the Abby of *Blish* 1 *C.*
In the Abby of *Waltham*, 2 *C.* 1 *P.*
In the Abby of *Barking*, 1 *C.*
In the Abby of *Tower hill*, 1 *C.*
In the Abby of *Bermondsea*, 1 *C.*
In the Abby of *Christchurch-land*, 1 *C.* 1 *P.*
In the Abby of *Feversham*, 1 *C.*
In the Abby of *Chirsey*, 1 *C.*
In the Abby of Saint *Mary* in *York*, 1 *C.*
In the Abby of *Durham*, 1 *C.* 1 *P.*
In the Abby of *Tinmouth*, 1 *P.*
In the Abby of *Withby*, 1 *C.* 1 *P.*
In the Abby of *Mews*, 1 *C.* [232]
In theAbby of *Altney*, 1 *C.* 1 *P.*
In the Abby of *Wardon*, 1 *C.*
In the Abby of *Crifton*, 1 *C.*
In the Abby of *Selby*, 1 *C.*
In the Abby of *Spatball*, 1 *C.*
In the Abby of *Porsley*, 1 *C.*
In the Abby of *Spalding*, 1 *C.*
In the Abby of St. *Augustine*, in *Canterbury*, 1 *C.* 1 *P.*
In the Abby of *Thorneton*, 1 *C.* 1 *P.*
In the Abby of *Twierdert*, 1 *C.*
In the Abby of *Nevcyton*, 1 *P.*
In the Abbey of *Coteshall*, 1 *C.*
In the Abby of *Monmouth*, 1 *C.*
In the Abby of *Westminster*, 1 *C.*

In the Abby of St. *Saviours* in *Canterbury*. 1 C. 1 P.
In the Abby of *Daventry* 1 C.
In the Abby of *Chriſtal* 1 C.
In the Abby of *Stratford*, 1 C.
In the Abby of *Milton*, 2 C.
In the Abby of *Serno*, 1 C. 1 P.
In the Abby of *Comb*, 1 C.
In the Abby of *Grenuby*, 1 P.
In the Abby of *Merivale*, 1 C. 1 P.
In the Priory of *Bath*, 1 C.
In the Priory of *Mountagu*, 1 C.
In the Priory of *Taveſtock* 1 C.
In the Priory of St. *Auguſtines* in *Briſtol*, 2 C. 1 P.
In the Priory of *Aumesbury*, 1 C.
In the Priory of *Ste'ſhorne*, 1 C.
In the Priory of *Bradſtow*, 1 P.
In the Priory of *Worceſter*, 1 P.
In the Priory of *Seaſwerth*, 1 C. 1 P.
In the Priory of *Dunſtable*, 1 C. 1 P.
In the Priory of *Royſton*, 1 C.
In the Abby of *Kennelworth*, 1 C. 1 P.
In the Priory of *Coventry*, 1 C.
In the Priory of *Turbury*, 1 C.
In the Priory of *Ely*, 1 C.
In the Priory of *Bedwel*, 1 C.
In the Priory of *Norwich*, 1 C. 1 P.
In the Priory of *Leaton*, 1 P.
In the Priory of *Sefword*, 1 C.
In the Priory of *Marton*, 1 C. 1 P.
In the Priory of *Lewis*, 1 C.
In the Priory of *Wenlock*. 1 C.
In the Priory of *Winchester*, 1 C. 1 P.
In the Priory of *Bordſly*, 1 C.
In the Priory of *Staudeate*. 1 C.
In the Priory of St. *Andrews* in *Northampton*, 1 C. 1 P.
In the Priory of *Badnam* in *Cornwal*, 1 C.
In the Priory of St. *James* in *Northampton*, 1 C. 1 P.

Writ de Idiota inquirendo & examinando.

NOte, That the King by the Law of Right is for to defend A his Subjects, their Goods and Chattels, Lands and Tenements; and therefore in the Law every Loyal Subject is taken into the Kings protection, and if he be put off the Kings protection for his offence, then every man may do to him, as againſt the Kings enemies, and he hath no remedy for the ſame by the Kings Laws. And becauſe that every man is within the Kings protection, an Idiot who cannot defend nor govern himſelf, nor order his Lands, Tenements, Goods, nor Chattels, the

the King of Right ought for to have them in his Cuſtody, and to rule him, and his Lands, and Tenements, Goods, and Chattels; and that appeareth by the Statute of *Prærogativa Regis, cap.* 8.

B And therefore when the King is informed, That one who hath Lands or Tenements is an Idiot, and is a Natural from his birth, the King may award his Writ to the Eſcheator of the County where ſuch Idiot is, or unto the Sheriff, to inquire thereof; and the Writ which ſhall be directed to the Eſcheator ſhall be ſuch. *Stamf.* 34. 18 E. 3. *Scire facias* 10.

The King to his Eſcheator, &c. Greeting. Becauſe we have received, that I. *of* B. *a Fool and Idiot is, ſo that to the Government of his Lands, and Tenements, Goods, and Chattels, he is not ſufficient; and that he in his fooliſhneſs a great part of his Lands and Tenements hath aliened, and alſo a great part of his Goods and Chattels diſſipated to his diſheriſ. and our manifeſt prejudice; we willing to provide for his indempnity in this plaint, command you, that in your proper perſon to him* I. *you go, and him by the ways and means, by which of his Eſtate you may be better informed, circumſpectly ye examine; and nevertheleſs, by the Oath of honeſt and legal men of the Bail, by whom the truth of the matter may be better known, diligently inquire, if the ſame* I. *be a Fool or Idiot, as aforeſaid is, or not; and if he be, then whether from his birth, or from another time; and if from another time, then from what time, and in what manner, and how; and if his Lucid intervalles he hath; and if the ſame* I. *in the ſame ſtate being, any Lands or Tenements hath aliened, or not; and if ſo, then what Lands and Tenements, and where, and to whom, and in whoſe hands the Lands or Tenements ſo aliened are, and in what manner, and how; and what Lands and Tenements remain to him yet; and of whom, as well the Lands and Tenements ſo aliened, as the Lands and Tenements retained to him, are held, and by what ſervice, and in what manner, and how; and what the yearly value of them is in all iſſues; and who his next Heir is, and of what age; and the inquiſition thereupon diſtinctly and openly made to us in our Chancery under the Seal, and the Seals of them, by whom, &c. ſend ye, and this Writ. Witneſs, &c.* [233]

And there are two other manner of Writs of another form in the Regiſter, which are directed unto the Eſcheator, to go to ſuch Idiot, and to examine him, and to inquire

thereupon. And the form of the Writ which is directed unto the Sheriff for to enquire of an Idiot, is ſuch:

The King to the Sheriff, &c. We command thee, that by the Oath, &c. diligently thou inquire, whether I. of B. Brother and heir of Th. of B. from his birth hitherto a pure Idiot hath been, for which the cuſtody of his Lands and Tenements in C. to us ought to belong, or by misfortune or otherwiſe into ſuch infirmity after he fell, for which ſuch cuſtody ought not to belong to us; and if by misfortune or otherwiſe, then by what misfortune, and in what manner, and how; and of what age he is, and of whom the Lands and Tenements immediately are held, and by what ſervice, and who now holdeth them, and what their yearly value is in all iſſues, and who in the mean time their iſſues hath taken, and the inquiſ. thereupon diſtinctly and openly, &c.

And there is a form of Writ, directed to the Sheriff, for to enquire of Idiots, which is much of the like form as the firſt Writ above is; and it is directed to the Eſcheator to make the enquiry.

And although a man be found Idiot before the Eſcheator, or before the Sheriff, taken by their examinations, &c. and that be returned into the Chancery, yet he who is ſo found Idiot, may in perſon, or by his friends, come into the Chancery, before the Chancelor and the Kings Council, and ſhew the matter, and pray that he may be examined before the Chancelor, and the Kings Council, whether he be Idiot or not: or he may ſue forth a Writ out of the Chancery to certain perſons, to bring him who is ſo found Idiot, before the King and his Council to *Weſtminſter* to be there examined; and if he be brought thither and examined, and found to be no Idiot, then the Inquiſition found before the Eſcheator, or Sheriff, and alſo the Examination which the Sheriff hath made, and returned thereupon, ſhal be of no effect, but the ſame Office ſhall be taken as void, without any other traverſe as it ſeemeth. And the Writ which ſhall be directed to the party to bring the Idiot before the Kings Council; ſhall be ſuch: A

The King to I. of T. greeting, becauſe we are given to underſtand, that R. thy Brother, Son and Heir of B. deceaſed thy father, an Idiot is, and of unſound memory is, ſo that for the government of himſelf or his Lands, he is not ſufficient to provide; we willing to be certified of the Eſtate of the foreſaid R. thy

thy brother, command thee firmly injoyning, that forthwith at the ſight of theſe preſents, the foreſaid R. in thy cuſtody being as is ſaid, before us and our Council at Weſtminſter without delay thou cauſe to be brought, ſo that he be there this inſtant Thurſday, there before the ſame our Council to be examined, and to be done with what by advice of our Council hereupon we think fit to ordain, and this under the pain of one hundred pound, by no means omit thou. Witneſs, &c.

B And he who ſhall be ſaid to be a Sot and Idiot from his birth, is ſuch a perſon, who cannot accompt or number twenty pence, nor can tell who was his Father, or Mother, nor how old he is, &c. ſo as it may appear, that he hath no underſtanding of reaſon what ſhall be for his profit, or what for his loſs: But if he have ſuch underſtanding, that he know and underſtand his letters, and to read by teaching or information of another man, then it ſeemeth he is not a Sot, nor a natural Idiot.

Writ de apoſtata Capiend.

C THe Writ *de apoſtata capiend.* lyeth where a man doth enter into religion, and is profeſſed; and afterwards he leaveth his houſe, and is vagrant, and running about the Country, againſt the rules of his Order of Religion; then the Abbot or Prior where he is profeſſed, may certifie the ſame under his Seal into the Chancery, and pray to have a writ to the Sheriff to apprehend him, and deliver him to the Abbot or his Atturney; and the form is ſuch.

The King to the Sheriff, &c. greeting, Becauſe Frier I. Canon of A. deſpiſing the habit of that Order, in habit ſecular from Country to Country in the Ballywick vagrant is, and runneth about to the peril of his ſoul, and manifeſt ſcandal of his Order, as our beloved the Abbot of A. hath ſignified to us by his Letters patents; we command thee, that the foreſaid I. wheresoever in thy Bail. he ſhall happen to be found, without delay thou arreſt, and to the foreſaid Abbot, or his Atturney in this part thou deliver eſt, according to the rule of the Order foreſaid to be chaſtiſed, witneſs, &c. [234]

A And upon that he may have an *Alias* and a *Pluries* againſt the Sheriff, and an Attachment if he will not execute the Writ.

B There is another Writ of another form, thus:

The King to the ſame, &c. greeting, Becauſe Frier T. Monk of M. of the Order of Clugni in that Order profeſſed, deſpiſing the habit of that Order, &c. as our beloved in Chriſt the Abbot of B. by his Letters patents hath ſignified to us; we command thee, that the foreſaid, &c. as above.

And it ſeemeth, that although he who departeth from his houſe of Religion, doth not change his habit, yet if he be vagrant, &c. and the Abbot of the houſe do certifie the ſame, yet he ſhall have ſuch Writ, notwithſtanding theſe words in the Writ (*Spreto habitu*, &c.) for thoſe are but words of form, and not of ſubſtance; For the habit of religion is the obedience and profeſſion which he hath made to ſuch Rule, &c. and if he relinquiſh that obedience, and the rules of that religion, and departeth, it ſeemeth that he doth relinquiſh the habit; And if that departure be certified by any Abbot where ſuch perſon was remaining, and under his obedience, when he departed and relinquiſhed his Religion, the ſame is ſufficient to have ſuch Writ upon ſuch Certificate; Or if it be certified by him who is the Viſiter of the Religious houſe, &c. But there are not any Writs in the Regiſter framed upon ſuch Certificate made by any Viſitor, or Abbot of any other Houſe: upon which the Party who left his habit was not remaining at the time, And therefore *Quære* of the ſame. C

Writ de Leproſo amovendo.

THe Writ of *Leproſo amovendo* lyeth; where a man is a Lazar or a Leper, and is dwelling in any Town, and he will come into the Church, or amongſt his neighbours where they are aſſembled, to talk with them to their annoyance and diſturbance, Then he or they may ſue forth that Writ for to remove him from their Company, and the Writ is ſuch: D

The King to the Sheriff and Maior of London, *greeting; Becauſe we have received that I. of N. Leprous is, and betwixt men of the City foreſaid commonly converſeth, and himſelf to a place ſolitary as the manner is, and to him belongeth to be transferred refuſeth, to the grievous damage of the men foreſaid, and manifeſt peril becauſe of contagion of the diſeaſe foreſaid we willing to take heed of ſuch peril as to us belongeth, and upon the premiſes what is juſt and uſed willing to be done,* E

command

command you that taking with you ſome diſcreet and Legal men of the City foreſaid, not ſuſpecting who of the perſon of the foreſaid I. *of* N. *and ſuch like diſeaſe, better notice have, to him* I. *ye go, and him in the preſence of the foreſaid men, ye cauſe diligently to be viewed and examined, and if him to be leprous ye ſhall finde, as foreſaid is, then him in the honeſteſt manner you can, from the communication of the foreſaid men to be removed, and himſelf to a ſolitary place to dwell there, as the manner is, cauſe to transfer without delay, that by ſuch his common converſation to the men foreſaid, no damage or peril may come in any wiſe. Witneſs, &c.*

F And upon that he may have an *Alias* and a *Pluries* and Attachment, againſt the Major or againſt him to whom the Writ is directed, if he will not execute the Writ.

G But it ſeemeth, If a man be a Leper or a Lazar, and will keep himſelf within his houſe, and will not converſe with his neighbors, that then he ſhall not be removed out of his houſe: But there are divers manners of Lepers, but it ſeemeth, that that Writ is for thoſe Lepers who appear upon the ſight of all men that they are Lepers, by their voice, and their ſores, and the putrifaction of their fleſh, and by the ſmell of them: But for thoſe who are infected with that diſeaſe in their bodies, and it doth not appear outwardly upon their bodies: *Quare*, whether ſuch Writ lieth for to remove them.

Writ de Onerando pro rata portione.

H THe Writ *De onerando pro rata portione* lieth where a man holdeth ten Oxganges of Lands by Fealty, and twenty ſhillings rent of the King, and the Tenant doth alien one part, or one Oxgang to one man, and another Oxgang to another man in Fee; and ſo to other the reſt of the Oxgangs, and the Sheriff or the Kings Officer will diſtrain one of the ſaid Tenants for the whole Rent, Then he who is diſtreined, may ſue forth that Writ, which is thus:

The King to the Sheriff, &c. I. A. *and W. have ſhewed to us, That whereas four Oxgangs of Land with the appurtinences in* E. *which* B. *his were, and which of us are held by ſervice of thirteen ſhillings the year, to be rendred by the hands of our Sheriff of the County foreſaid, who for the time ſhall be, to the hands of the foreſaid* I. A. *and* W. *as alſo to the hands of* T. *by*

T. by their purchaſe came, and although the ſame I. A. and VV. two Oxgangs of Land thereof onely hold, yet thou the foreſaid 13. ſhillings annual from the foreſaid I. A. and W. omitting the foreſaid T. who the ſaid two Oxgangs reſidue of the land holdeth exacteſt, and thoſe I. A. and W. for the foreſaid thirteen ſhillings annual to us to render by divers diſtreſſes compelleſt, to the no ſmall loſs and grievance of the I. A. and W. whereupon they have ſupplicated us to apply fit remedy for them, and becauſe we will no: that the ſame I A. and W. be injured in this part, we command thee, that if by Inquiſition upon the premiſſes to be made, or other lawful manner it may appear to thee the foreſaid four Oxgangs of land by the ſervice of 13 s. of us onely to be held: And them I. A. and VV. two Oxgangs of land thereof, and the foreſaid T. other two Oxgangs of land reſidue to hold, as is ſaid, then taking from the foreſaid I. A. and VV. thoſe things which to us belong, for the equal portion of the tenure which thereof they hold them of the reſidue of the ſervice foreſaid to be quit, ye permit, Provided ever, that the ſaid reſidue of the ſervice from the foreſaid T. to our uſe ye levy as it is juſt; witneſs, &c.

Br. Appar count 21.

And it appeareth by that Writ, That notwithſtanding A the Statute of *Quia emptores terrarum*, That if the Kings Tenant do alien part of the Lands held of the King, that yet the King or his Miniſter may diſtrein one of the Tenants for the whole rent, &c. Although that the Statute ſaith, *quod ſe ffatus teneat pro particula illa, &c.* But it ſeemeth the King is not bounden by the Statute, but a common perſon is. For if a man hold 20 Acres of Land by Fealty, and 20. s. rent of another man, and he alieneth one acre to one in Fee, and another acre to another in Fee, the Lord ſhall not diſtrein the Alienee, but for the rate and value of the land which he hath purchaſed, and ſhall not diſtrain one Alienee for the whole rent, *&c.* But if the Kings Tenant doth alien part of the lands which he holdeth of the King without licence, then the King may chuſe whether he will take the Alienee for his Tenant or not, and then it is a queſtion, whether the Alienee ſhall have ſuch Writ, but if the Alienee doth pay a Fine to the King for the alienation, it is reaſon that he have ſuch Writ as before, if he be diſtrained for the whole rent which iſſueth, ought of all the lands; whereof he hath purchaſed but part, *&c.*

29 H. 8. f. 28. Perkins 329.

And the like Writ as before, is awarded to the Queens Officers

Officers where they diſtrein one Tenant for the whole Rent, where he holdeth but part of the Lands, and ſeveral other Tenants hold the reſidue thereof.

B And if a man who holdeth 100 acres of Land, ought by his Tenure thereof to repair ſuch a Bridge, if he alien in Fee, 20 acres to one, and 20 acres to another, and one of them be diſtreined only to make the Reparations upon a preſentment found, he ſhall have a ſpecial Writ to the Kings Officers that they do not diſtrain him, but according to the rate of his portion of the Land which he holdeth. And the Writ is ſuch: Br. Apparcount. 21.

29 H. 8. f. 28.

The King to his beloved and truſty I. of T. and his companions, Our Juſtices to enquire of the defects of the great bridge of Kent, *and thoſe defects to cauſe to be repaired and amended, aſſign. greeting. Of the part of R. to us grievouſly complaining, it is ſhown that whereas it is preſented before you, That the ſame R. holdeth four hides of Land with the appurtinances in D. in the County foreſaid, which to the reparation of the Bridge foreſaid, antiently ought to be charged; Or thus: Which to the reparation of the Bridge foreſaid, are ſaid to be held, and although he but 20 acres of Land of the ſaid four hides of Land, and certain others the whole reſidue of the ſame four hides hold, yet you by occaſion of the preſentment foreſaid ſeven pounds, to which the ſaid four hides of Land, for reparation of the Bridge foreſaid are apportioned of the ſame R. as if he the four hides of Land foreſaid wholly held, whereas he holdeth them, not omitting the other Tenants foreſaid, indeavour to levy, and him on that occaſion grievouſly to be diſtreined, and many waies diſquieted cauſe, to the grievous dammage of him R. and manifeſt depreſſion of his eſtate. Whereupon he hath ſupplicated us a remedy to provide, and becauſe him R. we will not in this part unduly to be charged; we command you, that if by inquiſition thereof in the preſence of him R. if preſent he will be to be taken, or other lawful manner it may appear to you, him R. but 20 acres of the ſaid four hides of Land, onely to hold, and the reſidue of the ſame four hides of Land in the hands of other Tenants to be as is ſaid, then the ſame ſeven pounds to which the ſaid four hides of Land, for reparation of the Bride aforeſaid, thus aſſeſſed are, as well of the foreſaid R. as of the other Tenants foreſaid, viz of every of the ſame, according to the rate of his tenure, of the ſame four hides no man in this part ſparing, nor any Tenant of the ſame beyond the rate of his tenure, unduely charged to be levyed, you cauſe*

the

the preſentment foreſaid notwithſtanding: and if ought from the ſame R. beyond the portion of his Tenure juſtly is levied, that to him without delay you cauſe to be reſtored him. Witneſs, &c.

There is another form of Writ for the Kings Tenant where he is diſtreined for all the Rent where he holdeth but part of the Lands out of which the rent ought to be paid: which ſee in the Regiſter.

But look the Statute of 34 *Edw.* 3. *cap.* 15. That if the Kings Tenant in *Capite*, alieneth his Lands in Fee without Licence, that the Alienation ſhall not binde the King, but that he ſhall have his Prerogative of thoſe Lands and Tenements: and therefore *Quære*, the meaning of that Statute, and what is intended thereby.

Writ of Superſedeas.

THe Writ of *Superſedeas* lyeth in divers caſes; as if a man be ſued, and a *Capias* or Exigent be awarded againſt him, he may by his Friend ſue forth a *Superſedeas* out of the place where the *Capias* or Exigent was awarded againſt him: Or out of the term he may ſue forth a *Superſedeas* out of the Chancery directed to the Sheriff that he take Sureties of him, &c. to appear at the day &c. and that he let him at liberty; Or he may finde Sureties in the Chancery to appear at the day of the Return of the *Capias* or Exigent, and that he let him go if he have arreſted him thereupon, and if he have not arreſted him, that then he do not arreſt him, but that he ſuffer him to go in peace: And the form of the Writ is ſuch: A

The King to the Sheriff, &c. Whereas A. Impleaded before us by our Writ B. and certain others in our ſaid Writ, containing of a certain treſpaſs to the ſame A. by the foreſaid B. and the others foreſaid done, as is ſaid, and the ſame B. for that he came not before us to anſwer the foreſaid A. of the treſpaſs foreſaid in the Exigent in thy Court is put to be outlawed, him of the exigent foreſaid altogether ignorant of. Wherefore as he hath ſupplicated that whereas he which ready is in all things to ſtand to the right, we would help him in this part, We to the ſupplication foreſaid, as far as juſt it is yield, Command thee that if the foreſaid B. in thy County perſonally comming ſhall render himſelf to our priſon, as the manner is; then the exigent foreſaid

foreſaid thou ſurceaſe, and after if the ſame B. ſhall finde thee ſufficient Mainprize. Who him ſhall Mainprize to have before us at ſuch day, at which time our Writ of Exigent foreſaid before us is returnable to anſwer the foreſaid A. of the treſpaſs aforeſ. and to do further and receive what our Court ſhall conſider in the premiſſes, then the foreſaid B. from the priſon foreſaid (if on that occaſion and no other he be detained in the ſame) in the mean time cauſe thou to be delivered by the Mainprize foreſaid, and have their names of the mainprize foreſaid, and this Writ.

And when he findeth Sureties in the Chancery for to appear at the day of the return of the Exigent, then he ſhall have a Superſedeas of another form, which ſhall be ſuch.

The King to the Sheriff, &c. C. hath ſupplicated us, that whereas B. impleading before us by our Writ, the foreſaid C. and certain others of a certain treſpaſs to the ſame B. by the foreſaid C. and others foreſaid done as is ſaid; and although the ſame C. ready is the foreſaid B. of the treſpaſs foreſaid, if any there was to anſwer, and in all things to ſtand to the right according to the Law, and cuſtome of our Realm of Engl. *yet he, for that thou before us haſt returned, that the ſame C. was not found in thy Bail. according to the proceſs thereupon before us had, by thee in the Exigent is put in thy County to be outlawed, we would provide for his indempnity in this part, we for that, that W. R. and I. have main prize before us in our Chancery to have the foreſaid C. before us at the day our writ of Exigent againſt him C. is returnable, to anſwer the foreſaid B. of the treſpaſs foreſaid; will, that to the ſame C. if in the exigent premiſed on that occaſion, and no other he be put; as is ſaid in that Exigent farther to do, in the mean time ye ſurceaſe by the mainprize foreſaid and have there this writ, witneſs, &c.*

And if the Clerk, who hath the keeping of the Rolls for
B the taking of Statute Merchants, forge a bond in the name of another, and putteth the Maiors ſeal, and a ſeal in the name of the party to the ſame, and make an inrolment thereof in the Rolls, and afterwards doth certifie the ſame into the Chancery, for which a *Capias* is awarded againſt the
C party; then he, againſt whom ſuch proceſs is ſued forth, may come into the *Chancery*, and have a Writ directed unto the Sheriff, relating therein the whole matter, and reciting that the party hath upon that matter ſued forth an *Audita querela*, directed to the Juſtices of the Kings bench, comm. them to call the parties before them, &c. and commanding the

Sheriff

Sheriff, that if the party who is ſo ſued will finde ſufficient ſureties to the Sheriff, to appear at the day in the kings Beneh, and to pay the debt if he be condemned, that then he do ſurceaſe to arreſt or trouble him, &c.

And if a man do cite another by the Popes Bulls, perſonally to appear at the Court of *Rome*, &c. againſt the Statutes; now if he who made the Citation be com. to priſon he may ſue in the Chancery to have a ſpecial Writ directed to the Sheriff rehearſing the matter, commanding him that if the parties will find ſufficient ſureties, body for body, to appear before the King and his Council at a certain day, and perform what the Court ſhall adjudge or be decreed for the King or his Council, that then he let him at large; and by that writ the Sheriff ought to ſet him at liberty, and if he will not he ſhall have an *alias* and a *pluries* and attachment againſt him. D

If a man depart from his Maſter without ſufficient cauſe, and another knowing the ſame doth retain him, for which the Maſter bringeth a Writ againſt him for the retaining of his ſervant, upon which a *Capias* is awarded, he may in the Chancery, find ſureties to appear in Banco at the return of the Writ, and have a *Superſedeas* thereupon to the Sheriff, not to arreſt him, and if he have arreſted him to ſet him at liberty. E

And the like Writ and *Superſedeas* ſhall be awarded out of the Chancery if the action be brought againſt the Ser-
[237] vant, for his departure, and a *Capias* awarded, &c. he may find Sureties in the Chancery for to appear at the day, and have a *Superſedeas* to the Sheriff, that he do ſurceaſe for to arreſt him, & c.

And if a man be ſued in the Common pleas in debt, or in treſpaſs for damages, and a *Capias* or *exigent* is awarded, if the Debtor do find Sureties in the Chancery, to appear before the Juſtices at the day of the return of the Writ, and to ſtand right according to Law, he ſhall have a *Superſedeas* to the Sheriff not to arreſt him; and if he hath arreſted him, to ſet him at large. But it ſeemeth, that upon a *Capias* or *Exigend. ad ſatisfaciendum*, that the Sheriff ought not to let the party at liberty after he hath taken him, becauſe he is in execution for the party, &c. and ſo upon an *Exigent* awarded in a Writ of Accompt, he may ſue forth ſuch *Superſedeas*. A

And

B And ſo if a man doth become Surety for another, to pay a Fine in the Common pleas, or Kings Bench, and the Fine is not paid, &c. for which cauſe proceſſed of utleger. is awarded againſt the Surety, &c. at the *Exigent* awarded againſt the ſurety, he may ſue forth a *Superſedeas*, and finde ſureties in the Chancery to appear at the day, and to ſtand right to the Law: and thereupon he ſhall have a *Superſedeas* to the Sheriff, that he do not arreſt his Surety, and if he hath arreſted him, that he ler him at liberty.

And it ſeemeth reaſonable, that ſuch writ ſhall be granted, becauſe the Fine is a duty to the King, and the King may reſpite the ſame if he pleaſe; but if an *Exigent* be awarded upon a Judgement at the ſuit of the party, ſuch *Superſedeas* is not allowable.

C If a man be indicted before Juſtices of the Peace and put in *Exigent*, he may find Sureties in the Chancery to appear at the day of the return of the proceſs awarded by the Juſtices of Peace, and thereupon have a Superſedeas to the Sheriff not to arreſt him, and if he have arreſted him, to ſet him at liberty, and the Surety ſhall be body for body, &c.

D If a man be ſued to the *Exigent* at the ſuit of another in ſeveral perſonal Actions, he may find Sureties in Chancery, body for body, to appear to every action at the return of the writs, and thereupon he ſhall have a *Superſedeas* to the Sheriff, reciting that he hath found Sureties in Chancery to appear at the dayes, &c. commanding him not to arreſt him, &c. and the forms of the Writs of *Superſedeas* are in divers manners,

E And if a man be endicted before Juſtices of Peace, and a *Capias* or *Exigent* be awarded thereupon, and afterwards the Indictment is removed by *Certiorari*, the party out of the Chancery may ſue forth a *Superſedeas* to the Sheriff not to arreſt him, &c. becauſe the Indictment is removed by *Certiorari*, &c. or the Juſtices of Peace *ex officio* ought for to award a *Superſedeas* to the Sheriff after the *Certiorari* is come to them, to remove the Indictment as it ſeemeth, *tamen quære*, and in ſuch caſe he may have a *Superſedeas* out of the Chancery directed to the Sheriff, commanding him, that if the party will yield himſelf to the Sheriffe, and finde Sureties to appear at the day of the return of

of the Writ, that then the Sheriff do not arreſt him, *&c.*

If a man ſueth a Knight of St. *Johns* of *Jeruſalem*, and other by their proper names, and not by the name of Knight of St. *Johns*, *&c.* and he be ſued to the Exigent, the *Superſedeas* ſhall be purchaſed in the name of the Prior, and of the ſaid Knight his conſent, in the Chancery, and there they may finde Sureties to appear at the day; and thereupon they ſhall have a *Superſedeas* to the Sheriffs, that they do not arreſt him, *&c.*

If a man be condemned in Debt, or Treſpaſs, by falſe Verdict, and a *Capias* be awarded to arreſt the party; now if the party ſueth an Attaint, he may come into the Chancery, and there finde Sureties, that he ſhall appear at the day, *&c.* and will anſwer the party, and ſatisfie the King and the party, what belongeth to them, if the Attaint doth paſs againſt him; and upon the ſame he may have a *Superſedeas* to the Sheriff, that he do not arreſt him, and the form of the Writ is ſuch.

The King to the Sheriff, &c. A. *hath ſhown us, that where* B. *lately impleaded in our Court before our Juſtices, lately itinerate in the County aforeſaid, the aforeſaid* A. *and certain others of a certain treſpaſs to the ſame* B. *by the aforeſaid* A, *&c. done as is ſaid, of which treſpaſs the ſame* A. *by the Inqueſt (upon which he put himſelf before our aforeſaid Juſtices) was convict, by which the aforeſaid* A. *to the cuſtody of the priſon was delivered, in the ſame to abide, until we for that which to us belongeth in this part, and the aforeſaid* B. *of the damages to him adjudged ſhall be ſatisfied: And now the aforeſaid* A. *hath arraigned by our Writ returnable before us, &c. whereſoever, &c. a certain Jury of twenty four Knights, to convict the Jurors of the Inqueſt aforeſaid and hath ſupplicated us, that having the Jury aforeſaid ſo before us, him* A. *from the priſon, in which he is thus detained, we would cauſe to be freed, ſo that he may proſecute according to Law, &c. we willing the aforeſaid* A. *in the premiſſes, &c. to help; and for that the ſame* A. *hath found before us in our Chancery certain mainpriſe, viz.* A. *and* B. *of thy County who have mainpriſed, viz. every of them to ſatisfie as well us for that which to us belongeth, as the aforeſaid* B. *for his damages, as aforeſaid adjudged, if the Jury aforeſaid ſhall paſs againſt him, or the ſame* A. *that ſhall not proſecute. We command thee, that him* A. *from the priſon aforeſaid, if on that occaſion, and no other he be detained in the ſame, without*

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out delay to be delivered, thou cauſe by the mainpriſe abovesaid; ſo that the Jury aforeſaid proſecute he may, as behoveth, and have before the foreſaid Juſtices at the day foreſaid this Writ. Witneſs, &c.

A If a man be condemned in Treſpaſs, and the Plaintiff prayeth an Elegit, and a *Capias* is awarded againſt the party for the Kings fine, the King may grant a *Superſedeas* directed to the Sheriff, that he do not arreſt the Defendant upon the *Capias*, becauſe that the Plaintiff hath made his election to have his Execution by Elegit.

B And if in Treſpaſs the Defendant do agree with the Plaintiff pendant the Suit, he ſhall have a *Superſedeas* to the Sheriff, that he do not execute the Proces ſued forth againſt him; but then it ſeemeth, the ſame agreement ought for to appear upon Record in the Court, *&c.*

C If a man be condemned in Treſpaſs, and the Defendant doth bring an Attaint, and the Plaintiff ſueth an Execution by Elegit, and a *Capias* is awarded againſt the Defendant for the Kings fine, the Defendant in Chancery may ſue a *Superſedeas* of the *Capias* reciting in the Writ, how that the Defendant hath brought an Attaint, and that the Plaintiff hath ſued forth an Elegit, commanding the Sheriff, to whom the *Superſedeas* is directed, that if the Defendant do yeeld himſelf to priſon, and there finde Sureties to the Sheriff, to ſatisfie the King for what doth belong unto him, *&c.* that then he do deliver him out of priſon upon that ſecurity, if he conceive the ſame to be ſufficient ſecurity.

D If a man ſueth a Writ *De uxore abducta cum bonis viri*, and a *Capias*, or Exigent be awarded thereupon, the Defendant may finde Sureties in the Chancery, body for body to appear at the day, and upon the ſame he ſhall have a *Superſedeas* to the Sheriff, to ſet him at liberty, if he have arreſted him. And ſo upon an appeal of Rape, if the Defendant in Chancery findes Surety, body for body to appear at the return of the Writ, and to ſtand to the Law, he ſhall have a *Superſedeas* to the Sheriff, to ſet him at liberty, *&c.*

E And ſo if a Writ be granted out of the Chancery to attach one to finde ſurety of peace for a Menace to another, he may put in ſecurity in Chancery by ſurety to keep the peace, and thereupon have a *Superſedeas* to the Sheriff reciting the matter, commanding him to ſet him at liberty, if he have arreſted him.

If a man ſueth a *Supplicavit* out of the Chancery to Arreſt a man to finde Sureties of Peace, the Defendant who is Arreſted, may have a *Superſedeas* in Chancery to the Sheriff, commanding him not to Arreſt him, and the Writ ſhall be ſuch.

The King, &c. Greeting. Although lately at the ſupplication of M. *to us ſuggeſt* I. *the ſame* M. *of his life, and mutiliation of his Members grievouſly to have threatned, by our Writ we have commanded thee, that him* I. *before thee perſonally thou cauſe to come, and him ſufficient mainp. to finde with him* I. *under a certain pain upon him by thee reaſonably to be impoſed, for which thou will anſwer, that he any damage or evil to the ſame* M. *ſhould not do, nor procure to be done, ſhouldeſt compel: And if this before thee he ſhould refuſe to do, then him thou ſhould take, and in our priſon of* N. *ſafely ſhould cauſe to be kept, until ſurety he ſhould finde in the form foreſaid, yet becauſe* R. *and* S. *&c. before us in our Chancery perſonally appearing, have mainpriſed for the foreſaid* I. *that any damage or evil to the ſame* M. *in his body he ſhould not do, nor to be done ſhall procure. Viz. Every of them under the pain of Twenty pound which they granted of their Lands and Chattels to our uſe to be levied, if the ſame* I. *any damage to the ſame* M. *in his body ſhall do, or procure to be done. We command thee, that the execution of our Writ, foreſaid to thee in this part directed, thou ſurceaſe by the mainprize foreſaid, &c. Witneſs, &c.*

And if the Juſtices of Peace do award a Precept, or a Warrant againſt a man to finde Sureties for the Peace, he againſt whom the Warrant is, may finde Sureties in the Chancery for to keep the Peace, *&c.* and upon the ſame have a *Superſedeas* to the Juſtices of Peace; that they do ſurceaſe, *&c.* to arreſt him, *&c.* and thereupon the Juſtices ought to ſurceaſe, to make any Warrant againſt him afterwards, and if they have made any, that they ought to award a *Superſedeas* to the Sheriff, commanding him to ſurceaſe, and the Writ directed to the Juſtices of Peace is ſuch.

The King to his beloved and truſty his Juſtices of Peace in the County of Berks, *to keep aſſign. Greeting, &c.* W. *hath ſupplicated us, That whereas he feareth at the proſecution of* T: *by you to be taken and arreſted, and grievouſly impriſoned, until ſurety he ſhall finde, that the ſame* W. *any damage or evil*

to

to the ſame D. *in his body ſhall not do, nor procure to be done. We would command the taking and arreſting foreſaid, by ſufficient mainpriſe to ſurceaſe. We for that* R. S. P. *and* F. *of the Council of* W. *in our Chancery perſonally conſtituted, have mainpriſed for him* W. *that heavy damage or evil to the ſame* T. *in his body, ſhall not do nor procure to be done.* Viz. *Every of them under the pain of One hundred pounds, which they granted of their Lands and Chattels to our uſe to be levied in caſe that any damage or evil to the ſame* T. *in his body, by the foreſaid* W. *or his procurement come. To the ſupplication foreſaid, we yeelding, command you that to the taking and arreſting of the body of the foreſaid* W. *on that occaſion to be done, you ſurceaſe altogether by the Mainpriſe aboveſaid, &c. Witneſs, &c.*

F And if the Wife be in fear, or doubt that her Husband [239] will beat her, or kill her, *&c.* ſhe may ſue a *Supplicavit* in Chancery againſt her husband, to finde Sureties that he do not beat her, nor evil intreat her, and for to govern, rule, and chaſtiſe her reaſonably; and the Writ is ſuch.

The King to the Sheriff, &c. R. *hath ſupplicated us wife of* I. B. *that whereas ſhe of her life, &c. by the foreſaid* I. B. *grievouſly and manifeſtly is threatned. We would for the ſecurity of her* R. *in this part provide; we will to the Supplication foreſaid to yeeld, command thee firmly injoyning that him* I. B. *before thee perſonally thou cauſe to come; and him ſufficient mainpern to finde, &c. as above. That he the foreſaid* R. *well and honeſtly ſhall treat and govern, and that he any damage or evil to the ſame* R. *in her body, otherwiſe then to her husband becauſe of rule, and chaſtiſement of his wife lawfully and reaſonably belongeth he ſhall not do, nor procure to be done in any wiſe compel them, and if this before thee, &c.*

A And if a Man in a Court Baron in a Writ of Right, or in other Court, as in *London* in a Writ of Right vouch, a Foreigner to Warranty, *&c.* The Tenant who voucheth may ſue forth a *Superſedeas* directed to the Court, *&c.* commanding them that they do not proceed in the Plea, until the Warranty be determined, *&c. Quod vide* in the *Regiſter, fol.* 5. 11. *&* 13. And upon the ſame he may have an *Alias* and a *Pluries*, and an Attachment againſt the Bailiffs, or Major of *London* and Sheriff, if they will not ſurceaſe, *&c.*

B And if a man ſueth a Prohibition to the Spiritual Court,

and is the Parſon, and notwithſtanding the Spiritual Judg doth proceed to excommunicate the party, and upon Certificate thereof in the Chancery, a Writ of *Excommunicato Capiendo* is awarded. He who ſued the Prohibition, ſhall have a *Superſedeas* to the Sheriff, reciting the whole matter, commanding him that he do not arreſt the party, and if he have arreſted him that he deliver him. *Quod vide*, in the Regiſter, *fol.* 67. And he may have a *Superſedeas* out of that Court out of which the Prohibition did iſſue, *&c.* If the Collectors of the Subſidy or Tenths granted by the Clergy to be excommenged by the Ordinary for their Contumacy, *&c.* and that be certified; and thereupon a Writ directed to the Sheriff for to arreſt them, if it be teſtified in the Chancery afterwards by the Soveraign of the Collectors, that they have ſatisfied and ſubmitted themſelves, then upon that a *Superſedeas* ſhall be directed to ſurceaſe to arreſt them, and if he hath arreſted them, that he deliver them. And if the Biſhop do certifie an Excommunication into the Chancery againſt one for a contempt in a ſuit depending before him; and thereupon a Writ of *Excommunicato Capiendo* be awarded. If the Official do by his Letters after certifie in Chancery, that the Defendant hath appealed to *Rome*, or elſwhere. Now upon that Certificate he ſhall have a *Superſedeas* to the Sheriff, that he do not arreſt him pendant the Appeal, and if he have arreſted him, that then he do deliver him *&c.*

And ſo if he who is excommunicate, ſheweth in Chancery the Popes Letters, teſtifying that he hath appealed, *&c.* he ſhall have a *Superſedeas* to the Sheriff, commanding him for to ſurceaſe, *&c.* And if he hath taken him by force of the Writ of *Excommunicato Capiendo*, that then he do deliver him, *Quod vide*, *Regiſt. f.* 68.

If a man take one as his Villain, and the other ſueth a C Writ *De homine replegiando*; and he claimeth him as his Villain; he who is taken may put in ſureties in Chancery, to veeld himſelf and his Goods, if, *&c.* and thereupon he ſhall have a *Superſedeas* directed to him, who took him not to take him, and if he have taken him, that then he do deliver him. *Regiſt.* 79, 80.

If a man do hold plea in the County of a Treſpaſs which D is *Vi & armis*, *&c.* the Defendant may ſue out of the Chancery a *Superſedeas*, unto the Sheriff, or to the Bailiffs of the Hundred,

Hundred, where the Plea is holden, reciting that a Plea of Treſpaſs *Vi & armis*, ſhall not be holden in a leſs Court, then in the Kings Court, or other Juſtices by his Commandment. *Regiſt. fol* 111.

E And upon a Writ of Error brought of a Judgment given in *London*, or other Court, the party ſhall have a *Superſedeas* directed to the Major and Sheriffs, or other Officer, to ſurceaſe to award Execution, *Regiſt. f.* 129.

F If a man be diſtrained by a Proceſs which iſſueth out of the Exchequer as Executor to an Accomptant there, he may have a *Superſedeas* out of the Chancery directed to the Treaſurer and Barons of the Exchequer, ſurmiſing that he is not Executor nor Surety for the Accomptant, *&c.* commanding them that they do ſurceaſe, until they have inquired the truth thereof. And the like Writ is given where the Barons do award Proces of diſtreſs againſt any one who hath not any of the Lands of him who was the Accomptant, *&c.* but of his purchaſe before he was Accomptant, *Quod vide, Regiſt* 144.

G And if the Sheriff doth hold plea of forty ſhillings, the Defendant may ſue forth a *Superſedeas* that he do not proceed, *&c.* Or after judgment he may ſue a *Superſedeas* directed to the Sheriff, commanding him not to award execution upon ſuch judgment. And upon that an *Alias*, a *Pluries*, and an Attachment. *Regiſt.* 145. If a man for a debt of ten pound, ſue in the County by divers plaints there, every plaint under the ſum of forty ſhillings, where the debt is one entire debt, the Defendant may ſue a *Superſedeas* to the Sheriff, commanding him not to hold plea in thoſe plaints.

If any man ſue one in the County before the Sheriff for breach of Covenants, to his damage of ten pound or above the ſum of forty ſhillings, then the Defendant may ſue a *Superſedeas* to the Sheriff, that he do ſurceaſe. *Quod vi. Reg.* 146. [240]

A And if a man do ſue forth an *Audita querela*, to avoid a Statute Staple, or a Statute Merchant, he ſhall have a *Superſedeas* to the Sheriff, not to do execution hanging the Plea, *&c. Regiſt.* 183.

B Note that the Conſtable of *Dover*, who is Warden of the Cinque Ports cannot hold plea of a thing which doth belong to be determined in the County, if it be not of a thing concerning the keeping of the Caſtle of *Dover*, & if he do, the party ſhal have a writ directed unto him to ſurceaſe, & upon

the ſame an *Alias* and a *Pluries*, and an Attachment, and the Writ ſhall be ſuch.

The King to his beloved and truſty B. *Conſtable of his Caſtle of* Dover, *and Warden of his Cinque Ports, or to his Lieutenant. Greeting. Whereas amongſt other Articles which the Lord* Edward, *ſometimes King of* England, *our Grandfather to the amendment of the people of his Realm grant. Ordained it is, that the Conſtable of the Caſtle of* Dover *ſhall not implead at the gate of the Caſtle foreſaid, any foreign Plea of the Count. which toucheth not the cuſtody of the ſame Caſtle, and you a certain Plea betwixt* W. *of* C. *and* H. *of a certain debt which the ſame* W. *from the foreſaid* P. *and which Plea the cuſtody of the Caſtle foreſaid toucheth not, before you at the gate of that Caſtle hold, and him* P. *on that occaſion by many diſtreſſes diſquiet leſs juſtly againſt the tenor of the Articles foreſaid, as of the part of him* P. *we are given to underſtand, We the Articles foreſaid, inviolably willing to be obſerved, command you, that if ſo it be, then that Plea before you, further to hold ye ſurceaſe altogether, and him* P. *againſt the tenor of the ſame Articles, not moleſting nor grieving in any thing, and the diſtreſs, if any, &c.*

And if the Conſtable doth hold plea of any thing of C which he ought not for to hold plea, the party ſhall have his Action upon the Statute, although he doth not ſue forth any Writ before directed to the Conſtable.

Writ de procedendo ad Judicium.

NOte that by the Statute made *An.* 2 *E.* 3. 8. it is enacted, that commandment be not either by the great Seal, nor the petty Seal to delay common Right; but if ſuch commandments come, *&c.* that the Juſtices ſhall not ſurceaſe to do right in any point. D

And by the Statute made 14 *E.* 3. 14. the Juſtices ſhall not ſurceaſe for the great Seal or leſſer Seals.

And by that it appeareth, that the Kings Juſtices ſhall proceed according to Law, notwithſtanding the Kings commands directed and delivered to them, and if the party thinketh in his conſcience, that ſuch commandments ſhall be made, then he may ſue forth a Writ upon that Statute, commanding them to proceed, notwithſtanding ſuch commandments, and the Writ ſhall be ſuch.

The King to his beloved and truſty W. *&c. and his companions Juſtices*

Juſtices of the Aſſizes in the County of Shrewsbury *aſſign: Greeting. Whereas in our Parliament at* Northampton *the ſecond year of our reign, called by us, the Prelates, Earls, Barons, and other great men, and the whole Commonalty of our Realm in the ſame Parliament being it was agreed and appointed, that it ſhall not be commanded by our great Seal, nor by the Privy Seal, to the hindering or delaying the Common Law, and if ſuch commands ſhall come, that the Juſtices therefore juſtice to do by no means ſhall ſurceaſe, as in the Statute foreſaid more fully is contained. We command you that juſtice to do to the parties in the Aſſ. of novel-diſſ. which* T. *hath arraigned before you by our Writ againſt* I. *and* A. *his wife, and others in our Writ original contained of the Tenements in* E. *by virtue of any command of our great Seal, and privy Seal, to you directed and to be directed, by no means you ſurceaſe againſt the tenor of the Statute foreſaid. Witneſs, &c.*

But it ſeemeth to be in vain to ſue forth ſuch Writ, if the Juſtices do conſider their Oath, and their duty to God and the King; but becauſe ſome Juſtices are fearful, and will not do a thing which may turn to their diſpleaſure, that Writ was ordained as it ſeemeth, and for no other cauſe, for the Statute was ſufficient in it ſelf; and the pirty may have in the end of the Writ theſe words, viz. *But to the taking off the ſame Aſſiſe as of right, and according to Law and cuſtom of our Realm off* England *is to be done, ye proceed. Witneſs, &c.*

E And by the Statute of *Weſt.* 2. upon iſſues joyned in the Common Pleas or Kings Bench, they ſhall be tried by *Niſi prius* before the ſame Juſtices in the Country; and by the Statute of *Fines*, in the time of vacation, thoſe Iſſues ſhall be tried before one of thoſe Juſtices, aſſociating to him a Knight, *&c.* And by the Statute of *York* a Juſtice of Aſſiſe, aſſociating to him an honeſt man, ſhall take *Niſi prius*, and try the Iſſues ariſing thereupon, taken in the Common Pleas or Kings Bench, if they need not great examination, *&c.* But in thoſe caſes appeareth by the Regiſter, the King by his Writ may reſtrain and command the Juſtices, that they do not award *Niſi prius*, and if they have awarded any Writ of *Niſi prius*, that they ſend a *Superſedeas*, and the Writ ſhall be ſuch. *The King to his Juſtices of the Bench. Greeting. Although of the Common Council of our Realm, it is agreed and appointed, that the Inqueſts and Juries in the Plea of Land to be taken, which* [241] *are not of great examination, ſhall be taken in the Country before one Juſtice of the Peace where it is moved, aſſociating to him ſome*

honeſt man of the Countrey, Knight, or other; ſo that the common day be given in the Bench, and certain day and place be given in the Countrey, in the preſence of the parties, and alſo that the Inqueſt and Juries in a Plea of Land, great examination requiring before two Juſtices of the Bench in the form foreſaid ſhall be taken, yet becauſe the Plea which is before you in the Bench foreſaid by our Writ, betwixt W. *demandant, and* T. *Tenant of the Manor of* S. *with the appurtenances in the County of* S. *ſpecially as toucheth, ſpecially whereas the ſame* T. *the ſaid Manor holdeth for his life of our grant, and after the death of the ſame* T. *the ſame Manor to us and our Heirs wholly ought to revert; willing to provide for our indemnity in this part We command you, that if to the taking the Inqueſt thereupon it happen you to proceed, then ſuch Inqueſt before you in the Bench foreſaid, and not elſwhere ye ſhall take, the Agreement and Statute foreſaid, notwithſtanding, and if the Inqueſt thereupon by the Writ of Niſi prius to be taken you have ordered, then the taking that Inqueſt in the Countrey to be ſurceaſed, order ye. Witneſs, &c.*

There is another form of Writ for that matter in the A Regiſter. And *M.* 32 *H.* 6. it appeareth, That it is in the Juſtices diſcretion, whether they will grant *Niſi prius* or not, and by the like reaſon, the King at his diſcretion, and by his Writ directed to the Juſtices, may reſtrain the ſame.

And *Niſi prius* ſhall not be granted where the King is party, without the Kings ſpecial Warrant, or the Kings Attorneys aſſent, notwithſtanding the aforeſaid Statutes.

Writ upon the Statute made for the Steward and Kings Marſhal, that they do not hold Plea, of not, &c.

SEe by the Statute of *Articuli Super chartas*, cap. 3. That B the Steward and Marſhall ſhall not hold Plea of Freehold, nor any Plea of Treſpaſs, but onely of Treſpaſs done in the Kings houſe, and other Treſpaſſes done within the Verge, and of Contracts and Covenants which ſome of the Kings houſhold ought to have againſt another of his houſhold, and no others; and no Plea of Treſpaſs ſhall proceed which is not brought before the King remove out of the Verge where the Treſpaſs ſhall be done; ſo that they be ended before the King go out of the bounds of the Verge where

where the Treſpaſs is done; and if they cannot be ended there, the parties ſhall ceaſe, and ſhall be tried at the Common Law And the Steward ſhall not take Cogniſance of debts, nor of other things, or men, but onely of ſuch as be of the Kings houſe, he ſhall hold none other plea by obligation made, at the diſtreſs of the Steward or Marſhal; and if they do contrary to that Ord. it ſhall be void. And the Court of the Marſhalſea, nor the juriſdiction thereof, ſhall not exceed above 12 miles by the Statute made 13 *R* 2. 3. And a man may adde in an action brought againſt him in the Court of the Steward or Marſhal, that he was not of the K. houſhold at the time of the Treſpaſs or Contract made, or that the Plaintiff was not one of the Kings houſhold at that time.

C And if a man be ſued in the Court of the Stew. & Marſh. contrary to the Stat. then he who is grieved ſhal have ſuch writ.

The King to the Seneſchal and Marſhal of his Hoſtel. Greeting. Whereas amongſt certain Articles which the Lord Edward, *K. of* England, *our Grandfather to the amendment of the ſtate of his people granted, it is ordained that our Seneſchal and Marſhal ſhall not hold Pleas of Franktenement, of Debt, Covenant, Treſpaſs, or Contract of the men of the people, but onely of Treſpaſs of our Hoſtel, and other Treſpaſſes within the Verge, and of Contracts and Covenants which ſome of the ſame Hoſtel to others of the ſame Hoſtel ſhal do, and in the ſame hoſtel & not elſwhere, and now of the plaint of A. of B. we have received, that you at the proſecution of I. of L. the plea betwixt the foreſ. A. and I. who of the ſame hoſtel are not, as is ſaid of a certain debt, which the ſame A. of the foreſ. I exacteth, hold before you, to the no ſmall damage, and grievance of him A. and againſt the form of the Ordinance foreſ. We therefore willing the ſaid Ordin. in all and ſingular its Articles to be obſerved, command you that if ſo it be, then that plea before you farther to hold ye ſurceaſe altogether, him A. againſt the tenor of the Ordinance foreſ. not moleſting nor grieving in any thing, and the diſtreſs, if any, &c.*

D And if the plea be lawful, begun before the Stew. & Marſhal of the K. houſe within the Verge, & before the Plea be ended, the King doth remove; now the plea is therby diſcontinued, & then it behoveth the party to commence his action at the Common Law, & not within the Verge before the Stew. & Marſh. and if he do, the grieved ſhal have ſuch writ.

The King to his Seneſchal and Marſhal of his Hoſtel. Greeting. Whereas amongſt other Articles which the Lord Edward, *ſometime King of* England, *our Grandfather, to the amendment of the*

the State of his people granted, it is ordained, that the Seneſchal and Marſhal of our Hoſtel, ſhall not hold plea of Frankeſtenement, of Debt, of Covenant, or Contract of men of the people, but onely of Treſpaſs of our Hoſtel, and other Treſpaſs done within the Verge, and of Contracts and Covenants which any of the ſaid Hoſtel ſhall do to another of the ſame Hoſtel and in the ſame Hoſtel, and not elſwhere, and no other plea of Treſpaſs ſhall plead, which is not attached by them before we depart the Verge, where the treſpaſs was done, and ſhall plead and determine them ſpeedily from day to day, ſo that they be pleaded and determined before we depart the ſame Verge where the treſpaſs was done; and if it happen that within the bounds of the Verge they cannot be determined, ſuch pleas ſhall ceaſe before the Seneſchal and Marſhal, and the Plaintiffs ſhall have recourſe to the Common Law, and now of the grievous plaint of A. and B. We have received that you at the ſuit of R. of B. then, &c. to anſwer before you the foreſaid R. of a certain treſpaſs to the ſame R. by the foreſaid A and B. within our vergeate. The twelfth year, &c. done, as is ſaid, which plea by you was not attached before we that Verge departed, diſtrein, and thoſe on that occaſion many ways diſquiet leſs juſtly, to the no ſmall loſs and grievance of them A. and B. and againſt the tenor of the Articles foreſaid. We therefore willing the ſaid Ordinance in all and ſingular its Articles to be obſerved, command you that if ſo it be, then them A. and B. to anſwer before us of ſuch treſpaſs in no wiſe you diſtrein, but that plea before you further to hold altogether ye ſurceaſe, and the diſtreſs, if any, &c. Witneſs, &c.

And if a man be ſued by plaint before the Steward and Marſhal of the Kings houſe, who is not of the Kings houſhold, and the debtor plead, and affirmeth the Juriſdiction of the Court, and the cauſe be adjudged againſt him, yet he ſhall have an Action upon the Statute againſt the party who ſueth him there. *Quod vide, T. 3 H. 6.* by the Eſtoppel. A

Writ of Certiorari to remove Records, &c.

B

THe Writs of *Certiorari* for to remove Records out of one Court into another, are of ſeveral forms, and the form of the Writ to remove the Record of Re-diſſeiſin is ſuch.

The King to the Sheriff, &c. Becauſe for ſome certain cauſes, we would be certified upon the Record and Proces of a certain Inqueſt made before thee, and the Keepers of the Pleas of our Crown in thy County at N. by our Writ upon a certain rediſſ. to I. by R. done, as is ſaid with one meſ. with the appurten. in N. We command thee,

thee, that if judgment thereupon be given, then that Record and Proces foresaid, with all things those touching to us under thy Seal, distinctly and openly send thou, and this Writ. so that, &c. Wheresoever, &c. That having looked to the record and proces foresaid farther therupon to be done, you may cause what of right, and according to the custom of our Realm of England *is to be done. Witness, &c.*

And he may remove it after a disseisin, *&c.* And if a man be attainted in a Reddisseisin or a Postdisseisin, and hath no Lands within the County to be put in Execution, he may remove that Record by a *Certiorari* into the Kings Bench, and there have Execution. And he may remove a Recovery in an Assise of *Novel disseisin* into the Kings Bench by a C *Certiorari* in like manner; but the Writ of *Certiorari* saith, *Si judicium inde redditum sit, tunc record. proces, &c.* as above. By which it appeareth, that it ought that the judgment be given in the Assise, *&c.* otherwise it seemeth he shall not have the Writ; for the *Certiorari* is said to remove the Record, to the intent he may sue forth Execution upon the same, when it is removed in the Kings Bench, for there they may award Execution into every County to execute the same.

See a Recovery Ancient Demesn. 39 H. 6. 3. 4. But see 44 E. 3. 28. 36 H. 8. Br. Certiorari 20. there is no such Writ of Certiorari to remove the Record in Com. B. immediately, but first in the Chancery. Yet 43 *Ass.* 26, the contrary is admitted. 21 Ed. 2. 5 Br. Cert. Action 5.

D If a man do recover Lands by Assise of *Novel disseisin*, and the Defendant will sue a Certificate before other Justices, there he ought to sue forth a *Certiorari* to the Justices of Assise, to certifie the Record unto the new Justices who hold Plea upon the Certificate, and that word (*sine dilatione*) shall not be put in any Writ which hath a certain day of Return. And if a man recover by Assise, and the Defendant will sue an Attaint before other Justices, then he ought for to have a *Certiorari* to the Justices of Assise to certifie the Record, *Si judicium redditum sit.*

E And if a man recover before Justices in Eyre, in an Assise of *Novel disseisin* the other party may sue forth an Attaint before other Justices, and have a *Certiorari* to the Justices in Eyre, to send the Records before the other Justices. And the King may send his Writ of *Certiorari* to the Barons, Treasurer and Chamberlains of the Exchequer, to certifie the Record of Assise in the Treasury in their custody into the Kings Bench.

37 H. 6. 16. 9 E. 4. 50. Co. 24. E. 3. 24. 15 E. 4. 5.

F There is another Writ of *Certiorari* to the Treasurer and Chamberlains of the Exchequer, to certifie the Recorder of the

8 E. 4. 25, 26.

the Aſſiſe taken, but the judgment was not given, becauſe the Defendant died, but the Writ is of little effect, for that by the death of the Def. before judgment, the writ is abated.

And if a man will ſue an Attaint upon a Recovery in an Aſſiſe, which record of Aſſiſe is in the treaſury, then he who bringeth the attaint, ought to ſue a *Certiorari* to the Treaſurer and Chamberlains of the Exchequer to certifie the Record of Aſ. before the Juſtices before the Attaint be ſued forth. G

[243] If a man do recover damages in an Aſſiſe of *Novel diſſeiſin*, and before he hath execution of the damages, the Record is ſent into the Treaſury, then he may ſue a *Certiorari* to the Treaſurer and Chamberlains, to certifie the Record of Recovery in the Aſſiſe before the King, that Execution may be awarded for the damages. A

And if a man recover Lands and damages in an Aſſiſe of Freſhforce, and the Defendant hath not any thing within the City or Borough, for to ſatisfie the damages, then the party may ſue a *Certiorari* to the Major Bailiffs, to certifie the Record into the Kings Bench, that he may have Execution of the damages recovered. B

If the King maketh certain perſons Juſtices of Aſſiſe, *&c.* in one County, and afterwards at another Aſſiſes, he maketh others Juſtices of the ſame County, a general *Certiorari* ſhall be ſued to the firſt Juſtices, to certifie all the Records of Aſſiſe, and Juries which were taken in that County before the new Juſtices. C

And in Aſſiſe of *Novel diſſeiſin*, if the Verdict paſs for the Plaintiff, and before judgment be given, a new Commiſſion is to other Juſtices of the ſame County, the party for whom the verdict paſſed, may ſue forth a *Certiorari* to the firſt Juſtices to remove the Record into the Kings Bench to have Judgment given, therupon that Aſſiſe and Verdict paſt, or may ſue a *Certiorari* to the firſt Juſtices, to ſend the Record before the new Juſtices, that they may give judgment thereupon, and it behoveth to have another Writ unto the new Juſtices, to receive the Record, and that they proceed to Judgment; and when the Record is removed after Verdict given before other Juſtices, and they delay to proceed to judgment upon the verdict, the party for whom the judgment ſhould be given may ſue forth a Writ, directed to them, *Quod receptis & viſis record. & proceſs. pd.* that they proceed to judgment, *&c.* And thereupon the party may have an *Alias* and a *Pluries*, *Vel cauſam nobis ſignifices*, and if they D

will

will not do any thing, whether he ſhall have an Attachis queſtion; for there is a Statute made 3 *E.*3. which willeth, That Commiſſioners in ſpecial caſe, limited by the Statute, ſhall be puniſhed for their miſdoings, but it ſeemeth it ſhall not be, if the Statute be not made for that cauſe onely.

E And 27 *E.*3. *Aſſiſe*, a Juſtice was indicted for that he cauſed an Indictment which was found to be but treſpaſs to be entred in Record as Felony, *&c.* And the ſame was adjudged a void Indictment, becauſe it was to make void a Record. But yet it ſeemeth he might be indicted for taking of money, or for other falſifying, which doth not deſtroy and defeat the

F Record. *Quære.* And a man may have a Writ to the ſame Juſtices, before whom the verdict paſſed, *&c.* to proceed to judgment, as well as he ſhall have a Writ to other Juſtices, before whom the Record is removed.

G If a man in an Aſſiſe of *Novel diſſeiſin* or other Action, real, before Juſtices in Eyre, vouch one to warranty, who preſently entreth into warranty, and afterwards looſeth, the plaint. ſhall recover, and the Tenant ſhall have judgment to recover in value againſt the Vouchee; now if he who recovered in value, will have execution of the Lands recovered in value, he ought to ſue a *Certiorari* to the Treaſ. and Chamberlains of the Exchequer to certifie the Record in the Aſſiſe into the Chanc. and when it is there certified, the King ſhall ſend the Record by *Mittimus* into the Common Pleas, and thereupon the Juſtices ſhall award a *Scire facias* againſt the party againſt whom the recovery was, to come & ſhew why

H execution ſhould not be of Lands in value. And a man may ſue a *Certiorari* directed to the Juſtices of Aſſ. to remove the Record of Aſſ. into the Chancery, and alſo a deed which is before them, *&c.* and afterwards he may ſue forth a Writ of *Mittimus* unto the new Juſtices of Aſſiſe of thoſe Records, and of the deed which remained before the other Juſtices.

I And if the husband and wife ſue a Bond which is made to the wife in the Common Pleas, and the deed is there denied, for which they remain in the keeping of the *Cuſtos Brevium*, and the husband dieth, the wife may have a Writ out of the Chancery directed to the *Cuſtos Brevium* in the Common Pleas, that he deliver the deed to the wife, becauſe the Plea is determined by the death of the husband.

K And when the Juſtices in Eyre come, and ſhall be in any County by the Kings Commiſſion, then a Writ ſhall be ſent

to

to the Juſtices of the Common Pleas, to adjourn all the Pleas of that County, which are in the Common Pleas before the Juſtices in Eyre to be determined before them, and if the Juſtices in Eyre cannot determine the Pleas before they depart out of the County, then a Writ ſhall be ſent to the Juſtices in Eyre, to ſend thoſe Records and Pleas which are not determined nor adjudged into the Common Pleas again, and the Writ ſhall be ſuch.

The King to his beloved and truſty S. *Greeting. Whereas the Plea which was before our Juſtices of the Bench, by our Writ, betwixt* S. *Demandant, and* I. *Tenant of one Meſſuage with the appurtenances in* T. *in the County of* N. *together with the Writ foreſaid before you, and the companions lately our Juſtices itiner. in the County foreſaid was ſent to be pleaded, and that plea for certain cauſes in the Eyre foreſaid remained indiſcuſſed, without that, that the ſame plea elſwhere adjourned was to be pleaded, wherefore of the part of* S. *we are ſupplicated, that in the premiſſes we would do him juſtice; we for that cauſe conſider it to be expedient, that our Juſtice of the Bench upon the record and proces of the plea foreſaid before you and the foreſaid Juſtices in the Eyre foreſaid be certified. Command you, that the record and proces foreſaid together with the writ foreſaid, and all other things thoſe touching, to our Juſtices of the Bench, under the Seal diſtinctly and openly without delay ye ſend, and this Writ, that theſe being looked into they may proceed farther in the plea foreſaid, according to Law and Cuſtom of our Realm. Witneſs, &c.*

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Br. Brief 414. V. 22 H. 6. 25. 23 Aſſ. 14. Br. Brief 282. 40 E. 3. 32. Br. Brief 304.

And if an Aſſiſe of *Novel diſſeiſin* be brought in the Kings Bench, and the Defendant alledge and plead, that there is a Writ of a higher nature, depending in the Common Pleas, for the ſame Land, between the Plaintiff and Defendant then, if they be at iſſue, whether there be ſuch a Writ depending or not, the Defendant ought to ſue a *Certiorari* out of the Chancery to the Juſtices of the Common Pleas, to remove and certifie the Record into the Chancery, and upon the ſame certified, he ſhall have a Writ of *Mittimus* out of the Chancery to the Juſtices of the Kings Bench, with which Writ the King ſhall ſend the tenor of the Record which is there into the Kings Bench, and the Writ of *Mittimus* ſhall be ſuch.

The King to his beloved and truſty R. *of* W. *and his companions Juſtices of the Pleas before us, to hold aſſign. Greeting. Whereas* R. P. *lately arraigned a certain Aſſiſe of* Novel diſſeiſin *before*

before us at Westminster, *by our Writ against* B. *of the Tenement in* A. *and two Messuages, three carves of Land, twenty acres of Meadow, with the appurtenances in the same Town in view had put, and the same* B *pleading in that Assise, had alledged, that a Writ of higher nature then, and long before, hanged betwixt the partses foresaid, before our beloved and trusty* W. *and his companions our Justices of the Bench, and the Record and Proces thereupon before our foresaid Justices of the Bench had, to Warranty had vouched, as we have received. We consider it to be expedient and necessary, that you upon the tenor, record and proces foresaid, before the foresaid Justices of the Bench had, should be certified, send you that tenor which we have caused to come before us in our Chancery, under the foot of our Seal command, that looking into the record and proces, ye cause farther to be done what of right, and according to Law and Custom of our Realm, is to be done. Witness, &c.*

B And if a man do recover in an Assise of *Novel disseisin* before Justices of Assise in the County, and before execution sued of the damages, the Record is removed into the Chancery by *Certiorari*: He who recorded in the Asise, may sue forth a Writ of *Mittimus* to send the Record into the Kings Bench, commanding them for to proceed, and to award execution; and the Writ is such.

The King to his beloved and trusty F: *and his companions our Justices, the pleas before us to hold assign. Greeting. Whereas* I. *by the Recogn. of Ass. of* No. diss. *which* W. *araigned before* B. *and his companions lately the Justices of the Lord* Edward, *sometime King of* England, *our Grandfather. The Ass. &c. assign. against* R. *and others &c. of the Tenement in* T. *had recovered his seisin of one Messuage with the appurtenances in* B. *by consideration of the Court foresaid, and his damages, which to ten pound were taxed, as by the record and proces of the Asise foresaid, which before you for certain causes, we have caused to come, more fully appeareth, and execution of the judgment to the damages recovered, yet resteth to be done, as of the part of him* I. *we are given to understand. We therefore willing that due execution of the said judgment be made, the record and proces foresaid to you, send under the foot of our Seal, command, that seeing the record and proces foresaid, farther as to execution of the judgment foresaid, to be done you cause, what of right, and according to Law and Custom of our Realm is to be done. Witness, &c.*

And

And if a man recover Lands by Aſsiſe of *Novel diſſeiſin*, C before Juſtices of Aſsiſe, and the Defendant hath a Writ of *Warrantia charta* depending in the Common Pleas, the party may ſue a *Certiorari* to remove the Record of the Aſsiſe in Chancery; and thereupon have a *Mittimus* of the Record of Aſsiſe to the Juſtices of the Common Pleas, and in the end of the Writ ſhall be ſaid, *Ut his inſpectis ſecurius procedere valeant in placito Warrantiæ prædict. ſecund. Legem, &c.*

And in an Aſsiſe of *Novel diſſeſin*, if the Defendant plead D two or three Records in Aſsiſe before other Juſtices, which Record is in the Treaſury, *&c.* Now if the Record be denied, for which he ſueth a *Certiorari* to the Treaſurer and Chamberlains of the Exchequer, to certifie the Records at a certain day into the Chancery, if they at the day certifie any Records, but do not certifie that there are other Rolls of the ſame Juſtices remaining in the Treaſury in the Tower of *London*; ſo as that they have not made a full ſearch of the Records, then the King ſhall ſend to the Juſtices of Aſsiſe his Writ, reciting the matter, commanding them for to continue that Aſsiſe until another day; ſo as the Defendant be not damnified by failing of the Record, and the ſame ſeemeth to be reaſonable.

And if a man be bound in a Statute Staple, to pay a E certain ſum of money at a day certain, after the day the party who hath the Statute, may come to the Major of the Staple, and ſhew him the ſame, and pray him to certifie the ſame into the Chancery; and if the Major will not ſo do, then the party who hath the Obligation may come into the Chancery, and ſhew the ſame there, and pray a *Certiorari* to the Major to certifie the Inrollment of the Statute, and if the Major do return that he hath twice or oftner, certified the ſame before that time, as appeareth by the Inrollment made by the Major; if there appear no ſuch Certificate upon Record in the Chancery, then he who hath the Bond of the Statute may ſue forth a new *Certiorari* to the Major, reciting in the Writ, that there is not any Certificate recorded in the Chancery, commanding him to certifie the Inrollment of the Statute which is before him, and upon the ſame he may have an *Alias* and a *Pluries* againſt

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against the Maior, if he will not certifie the ſame, and alſo an attachment againſt the Maior, directed to the Sher. &c.

Vi. 10. *El. Dyer* 274. 375.

A The writ of *Certiorari*, is an original writ, and iſſueth ſometimes out of the Chancery, and ſometimes out of the kings bench, and lieth where the K. would be certified of any record which is in the Treaſury, or in the *Com. pleas*, or in any other Court of Record, or before the Sheriff and Coroners, or of a Record before Commiſſioners, or before the Eſcheator, then the King may ſend that writ to any of the ſaid Courts or Offices, to certifie ſuch record before him in *banco*, or in the Chancery, or before other Juſtices where the King pleaſeth to have the ſame certified: and he or they to whom, or who the *Certiorari* is directed, ought to ſend the ſame record according to the tenor of the Writ and as the writ doth command him; and if he or they fail ſo to do, then an *alias* ſhall be awarded, and afterwards a *Pluries ut cauſam nobis ſignifices*, and after an attachment, if a good cauſe be not returned upon the *Pluris* wherefore they do not ſend the Record.

But ſee *Lambert* 411. the uſe at this day is to award a ſubpena to the Commiſſ. 37. *h.* 6. 30. *Marle.*

B Alſo the King might by ſuch Writ of *Certiorari* ſend for the tenor of the Record, or for the tenor of the Record at his election, and thoſe writs ought for to be obeyed and the Records ſent, as the writ commandeth them to do; and the form of ſome of thoſe writs here follow.

The K. to his beloved and truſty R. greet. becauſe for cer. cauſes we would be certif. upon the rec. and proceſs of outl in I. in the Count. of T. publ. and before you and your Compan. our Juſt. divers felonies in the Count. foreſ. to hear and determ. aſſign. return: we com. you that the tenor of the record and proces foreſ. Or thus, *The ten. of the rec. and proceſs of outl. foreſ. with all things thoſe touching, to us in our Chanc. under your ſeal diſtinctly and openly without delay ye ſend, and this writ, witneſs, &c.* And to certifie an indictm. taken before the Juſtice in *Eyre*, the form

C is ſuch: *The K &c. becauſe upon the preſentment made before you and your companions our Juſtices Itiner. in the Count of Lincoln, of the death of A. whereupon B. indicted is, and alſo upon the inquiſition thereupon before you there made for ſome certain cauſes we would be certified; we command you that the Inrollment, Preſentation, and Inquiſition foreſaid, to us under your ſeal diſtinctly and opnly, without delay you ſend, and this writ witneſs, &c.*

And

42. *Aſſ.* 40. *Br Certiorari* 9. the writ was awarded to the executors of the Coronor. *Vi* 30. *b.* 6. 24 for *Certiorari* to the Coronors. *Vi.* 2. *Eliz. Dyer* 223. *Profters* caſe

And there is another form of Writ directed to the Coro- B
nors, *The King to his Coron. in the Coun. of Lin. greet. becauſe for ſome certain cauſes we would be certified upon the Record and proceſs of a cert. appeal which W. lately approver deceaſed, made againſt S. of a cert. robbery, which the ſame W. of B. in the County &c. together were ſaid to have done; we com. you, that the Rec. and proceſs of the ſame appeal with all things thoſe touching, to us under your ſeals, &c.* And that writ lieth, where a man before Juſtices becometh an Approver, and the Coroner appointeth him to make his approvement, and afterwards the approver dyeth; the King may write unto the Coroner to ſend him the Record of the approvement. And another E
form of *Certiorari* to the Major and Sheriffs of *London, The K. to the Maj. and She. of* London, *greet. becauſe cert. buſineſſes by appeal, indictments and attachments, before you in the City of* Lond *foreſ. lately entred, are not yet determined, and certain inque. in the ſame City made are return. the inque. of which buſineſſes, records, and proceſs remain with you as is ſaid, and all which, by our beloved and truſty B. C. and D. our Juſtices divers treſpaſſes in the ſame City, to hear and determ aſſign we will have diſpatched, & finally to be determined, we command you that the foreſaid record and proceſs, with all things thoſe touching to the foreſaid Juſtices under your ſeals, &c.*

And if the King by vertue of any Writ of *Certiorari*, re- F
move any Record before any of the Juſtices, he may afterwards ſend for that Record, and remove the ſame before himſelf, or other Juſtices at his election, and then the Writ is ſuch: *The K. &c. becauſe for cert. cauſes we would be certified upon the record and proceſs of a cert. inqu. taken before our beloved and truſty W. and P. out Juſtic. our Gaol of N. aſſign. to deliver, for the death of E. whereup. C for the death foreſ. was indicted as is ſaid, which rec. and proceſs before you for cert. cauſes, we have cauſed to come, which with you remain as is ſaid, we com. you that the rec. and proceſs foreſaid with all things thoſe touching, to us under your ſeals diſtinctly, &c.* And when the
King would be certified of an Outlawry in the County, G
then the *Certiorari* ſhall be as well to the Sheriff, as to the Coroners of the County to certifie the ſame. But if a man be condemned in the Kings Bench, and afterwards Outlawed for the Kings fine upon his condemnation; If he will ſue forth a pardon of the Outlawry, he ought to have a *Certiorari* out of the Chancery; to certifie the record of the

the condemnation, which ſhall be ſuch:

The K. to his beloved and truſty I. &c his chief Juſtice, greet. Whereas E. of a cert. treſp to F. with force and arms done, before you convict. was, and for that he came not before us to ſatisfie us for his fine, which to us belongeth in this part and the foreſ. F. for his damages in this part adjudged, in the exig was put to be outlawed, and on that occaſion after outlawed, which outl. before you now is returned as we have received, & the ſame F. us hath ſupl. that whereas he the ſame F. for his damages foreſ. now hath ſatisfied, we would pardon him graciouſly the outl. foreſ. we for the ſame cauſe willing to be certified upon the rec. and proceſs of outl. foreſ. and if the ſame E. the foreſ. F. of his damm. foreſ. hath ſatisfied, as it is ſaid, or not, you command that us upon the premiſſes under your ſeal diſtinctly and openly ye advertiſe. And if a man be indicted before Juſtices of goal delivery of felony, and afterwards is acquitted, then if he who is acquitted,

A doubteth he ſhall be troubled by reaſon of the ſame indictment, he may ſue forth a *Certiorari* to remove that record and proceſs of the inquiſition, &c. into the chancery, &c.

And if a man do recover debt or damages before Juſtices of *Oyer* and *Terminer*; and hath not execution, he may remove the Rec and the proceed. into the Kings bench, and there to ſue execut. & have a *Scire facias* upon that rec. &c. 14. *h.* 7. 15. 15. *h.* 7. 5. 36. *h.* 6. 23.

And if a man do recover damages in an action of treſp. before Juſtices of *Oyer* and *Terminer*, and hath the party in Execution by reaſon of the Judgment, if the party in execution dieth in priſon, he who recovered may ſue a *Certiorari* to the Juſtices to remove the record into the Kings Bench, that the Juſtices there may award execution as the Law requireth in ſuch caſe: And I think in that caſe, that the party ſhall have execution by *Elegit*, or by *Scire facias*; for it ſeemeth not to be reaſonable, that the death of him who dieth in priſon, ſhould be a ſatisfaction to the party, *tamen quære*, for the ſame is a doubt. 39. *h.* 6. 34. 34. *h.* 6. 47. *contra.* 4 *E.* 4. 39. 33 *h.* 6. 48. *Danby.*

C If a man be arraigned of murder, and found guilty *ſe defendendo*, for which he is bailed, or committed to priſon, he may have a *Certiorari* to remove the record into the *Chancery*, that he may ſue forth a pardon thereupon according to the courſe of the Law, &c. 47 *E.* 3. *Execution* 41.

D If a man recover damages in treſpaſs in the Kings Bench, and hath the defendants lands in execution by *Elegit*, and then he who recovereth is diſſeiſed by the other, for which he

he bringeth an aſſiſe before the Juſtices of Aſſiſe; he who bringeth the Aſſiſe, ought to have a *Certiorari* to the chief Juſtice of the Kings Bench, to certifie the Record and the proceedings to judgement given in the Kings Bench, and of the execution there, and the Plaintiff may have the rec. in Chancery exemplified under the great Seal if need be to the Juſtices of Aſſiſe.

And if a man recover by Aſſiſe of novel diſſeiſin, and E
the party will ſue an attaint in the common pleas, or in the Kings Bench, he ought to ſue a *Certiorari* to the Juſtices of Aſſiſe, to remove the Record in the Kings Bench, or into the Chancery, &c. that he might ſend the ſame before the Juſtices whom the attaint is ſued, &c.

And it appeareth by the Regiſter in the Title (*Certi-* F
orari) that if falſe judgement be given before the Steward and Marſhal of the Kings houſe upon a plaint there ſued; That the party may ſue an attaint by writ before the Steward and Marſhal to attaint that Jury, &c. and that the King may ſend a *Certiorari* to certifie the Record into the Chancery which ſhall be directed to the Steward and Marſhal of the Kings houſe; but the Record ſhall be certified under the Seal of the Steward only, as appeareth by the words of the Writ, &c.

There is another writ of *Certiorari* directed to the trea- G
ſurer and Barons of the Exchequer, to certifie the King of the debt which I. oweth unto him, and of the debt which the anceſtor of the ſaid I. owed the King, and which are clear debts, and to certifie the ſame, without delay under the Exchequer Seal, and not into the Chancery, nor into the Kings Bench.

There is another *Certiorari* directed to the Juſtices of H
Goal delivery to certifie the Record and proceedings upon an Indictment of murder and acquittal thereupon into the Chancery, &c.

There is another *Certiorari* to the Juſtices of peace, to I
certifie into the Chancery the tenour of the Records and proceſs of Outlawry of ſeveral perſons retorned before them. There is another writ of *Certiorari* directed to the Stew. and Marſh. of the K. houſe to certifie under the ſeal of the Stew. into the Kings Bench, an Indictment taken K
before the Stew. and Marſhal, which the K. would have to be determined only before him in the Kings Bench.

There

L There is another writ of *Certiorari* to the Mayor and Sheriffs of *York*; to certifie the tenor of the Record, and proceedings in an Aſſiſe of *Freſhforce* ſued before them in the ſame City without writ; and to certifie the tenor of the Record and proceedings in the Chancery.

M There is another Writ of *Certiorari* to the Biſhop of *Oxford*, to certifie into the Chancery how many perſons were admitted, inſtituted and inducted into ſuch a Church, ſince the firſt year of King *E.* 4. until this time, and at whoſe preſentation, and by what title and in what manner.

N There is another writ of *Certiorari* to the *Cuſtos brevium*; to certifie the King in the Chancery, the tenor of the Original and Judicial Writs, and the warrants of Attorney which are in his cuſtody concerning ſuch an action or ſuit.

O And another writ directed to the Treaſurer and Chamberlains of the Exchequer, to certifie the King in the Chancery, the Record and proceedings of a writ of *quo warranto*, ſued by the Kings anceſtor, King *Edw.* the firſt againſt the Abbot of *VVeſtminſter*, for certain Liberties claimed by the ſaid Abbot, &c. [247]

A And another writ of *Certiorari* to the Commiſſioners of Sewers, to certifie the King in the Chancery at a certain day, all the preſentments before them made againſt ſuch a perſon, &c.

B And a writ of *Certiorari* directed to the chief Juſtice of the Common Pleas, to certifie the tenor of a Record and proceedings, and proceſs of *Utlagerie* againſt ſuch a one in *London*, remaining in *Middleſex* before the Juſtices of the common pleas, and to certifie the ſame into the Chancery.

C And if a Baron who is a Peer of the Realm, be ſued in the common pleas, and Proceſs be awarded againſt him by *Capias*, or *Exigend.* then he may ſue a *Certiorari* in the Chancery, directed to the Juſtices of the common Pleas, or Kings Bench, teſtifying, That he is a Peer of the Realm, commanding them to award ſuch proceſs againſt him, as they ought to do againſt a Peer of the Realm, and the Writ is ſuch:

The

The King to his Juſtice of the bench greet. we com. you that if G T. Kn^t before you at the ſuite of any, by action popular implead. &c. ſuch proceſs and no other againſt him in the action foreſ. ye cauſe to be made as againſt Lords, greatmen, Earls, or Barons of our Realm of Engl. who to our Parl. of our ſum. ought to come, or any of them according to Law, and Cuſtome of our Realm of Engl. is to be made, becauſe the foreſ. G. T. one of the Barons of our Realm foreſ. to our Parl. of our ſum. royal coming we record, and this we declare to you, and to others whom it concerneth make known, witneſs &c.

And if a man recover damages and coſts in an Aſſiſe of *novel diſſeiſin*, he may ſue a *Certiorari* to remove the record into the Chancery directed to the Juſtices of the Aſſiſe, to the intent that the K. may ſend the ſame to any of his Courts, that he who recovereth may ſue execution of the damages recovered; and upon that record ſent into the Kings Bench, he ſhall ſend that record into the com. pleas by writ of *Mittimus* directed to the Juſtices there, that they do as they ought for to do according to the Law, to make the damages to be levied. D

There is another form of *Certiorari* by theſe words. E

Eſſex. *The King &c. willing for cert. cauſes to be certified upon the tenor of the rec. and proceſs of outl. in W. of B. of the Coun. of N. husbandm. in the ſame Coun.* Or thus, *in our Huſting at Lond. publiſh. and before the Juſtic. of the K. of the Bench ret. which rec. and proceſs the ſame King before him for cert. cauſes hath cauſed to come, as it ſaid, and it the ſame W. hath yielded himſelf to the priſon of the Marſhalſe of him the K. before him, on that occaſion foreſ. and not theref. the tenor of the record and proceſs of the outl foreſ. as alſo let the Certificate of the yield of him to the ſame King into his Chancery under the ſeals of I. F. his chief Juſtice, the pleas before him the K. to hold diſtinctly, and openly without delay be ſent with this bill, witneſs the K. himſelf at Weſtm. the 12 day of May the 30 year of his reign.* And by that appeareth although the record be remaining in Banco, yet the King may ſend for to remove it into the Chancery.

And if a man be arraigned of murther, and it is found that he killed the party *ſe defendendo*, he ought for to ſue a *Certiorari* to remove the record into the Chancery, and upon the removal thereof to have his pardon: and the form of the pardon doth appear in the regiſter *fol.* 287. and 288. F

And

G And if a man be attainted in Aſſiſe of *Novel diſſeiſin* before Juſtices of Aſſiſe, of a diſſeiſin with force, and be afterwards outlawed for the Kings fine; if he will have a pardon of the utlag. he ought for to have a *Certioari* directed to the Juſtices of Aſſiſe, to certifie the King in his Chancery the tenor of the record of the Aſſiſe, and alſo another writ to the Juſtices to certifie the K. in his Chancery, whether the defend. in the aſſiſe hath yielded himſelf to priſon, and hath certified the party his damages. And if the ſame be ſo certified in the Chancery then upon that certificate he ſhall have his pardon of the outlaw, and the form of the Charter of pardon appeareth in the Regiſter 288.

And if a man be condemned in the Common pleas in debt and outlaw. upon the ſame; then before he ſhall have his pardon he ought for to yield himſelf to the priſon of the Fleet, and ſatisfie the party and the record of his condemnation, and of the ſatisfaction ought to be certified by *Certiori* unto the King in his Chancery; and thereupon he ſhall have his pardon; and that is by the Statute of 5 E. 3. *cap.* 12.

And if a man be outlawed ſeverally, at the ſuit of three ſeveral perſons in ſeverall actions in which he was condemned; he ought to ſue a *Certiorari* to remove the tenor of thoſe records and proceſs into the Chancery, and alſo to have a *Certiorari* to the Juſtices of the Common pleas, if the ſuit be there to certifie the King in Chancery, whether he hath yielded himſelf to the priſon of the Fleet, and hath ſatisfied the parties, and when the chief Juſtice hath certified the ſame into the Chancery; then he ſhall have his pardon for the outlawries, and not before; and the form of the pardon appears in the Regiſter 288.

H There is another *Certiorari* to the Eſcheator to certifie the manner and cauſe of taking of lands into the Kings hands after death, and the writ is ſuch.

The King to &c. eſchaator &c. greeting for ſome cert. cauſes we would be certif. upon the manner and taking of the lands and tenem. of I. which were deceaſed in B. in thy Bayl. by thee into our hand as is ſaid, we command thee, that us in our Chancery upon the manner and cauſe abovеſaid under thy ſeal diſtinctly and openly thou advertiſe, this writ ſending back to us, witneſs, &c.

But note that it is enacted by Statute, that if the Eſchea-

[248] tor finde any office of any lands or tenements for the king that he ought for to retorn the Office into the Chancery, or into the Exchequer within a moneth after the finding thereof, upon a pain of 20 l. payable to the King, and to him that will sue for the same, and that Statute was made 8. H. 6. *cap* 16.

There is another *Certiorari* directed to the Escheator to certifie the King in Chancery at his perill, the value of the Knights fees, and of the advowsons which I. had who is dead, who held of the King the day of his death *in capite* and the writ is thus. A

The King to his Escheat. &c. we will. for certain causes to be certif. upon the true value of Knights fees, and advow. of Church. of I. which were deceased, who of us held in chief in thy bail. the day he dyed, and which by occasion of death of the same I. are taken into our hands, we command thee that those fees, and the advowson foresaid by Oath &c. diligently to be extended thou cause, what (viz.) their value is in all issues according to the true value of the same, and that extent distinct and openly made to us under thy seal, and the seals of them, by whom it shall be made, without delay send ye, and this Writ witness &c.

And if a Lunatick, or a Madman doth kill a man, or if a man doth kill a man by Misfortune, or if an infant of 8 years old doth kill a man; if they will sue a pardon for the same; the use is to sue a *Certiorari* to remove the tenor of the record and proces into the Chancery, and thereupon to have a pardon: and in the Register do appear several forms of such *Certioraries* to remove such records which a man may see there more fully, and therefore they are not here mentioned. B

Writ of forcible entre upon the Statute of 8. H 6.

THE Writ upon the Stat. of 8. *H.* 6. of *Forcible entre* lyes, where a man is disseised or put out of his lands or tenements with force, whereof he is seised of an estate of free hold, in fee-tail, or in fee, or for life; he may sue forth that writ of *Forcible entre* upon that Statute; or if he be disseised or put out of his Lands or Tenements peaceably, and afterwards the disseisor or her who ousteth him doth keep and detain the lands and tenements with force, then he who is so put out may sue that Writ if he will, and in that Writ he shall recover his damages and C

his

his coſts treble what he is found endamnified by the Jury and what he hath expended in that ſuit.

D If a man enter into any lands and tenements and diſſeiſeth another with force, and keepeth the lands and tenements and detaineth them with force, then he who is ouſted and diſſeiſed may have that Writ, although the words of the Statute are in the disjunctive, *ſc.* where a man is diſſeiſed with force, or where a man doth diſſeiſe one peaceably, and afterwards doth keep the lands with force, becauſe the intent of the Makers of the Statute was to puniſh ſuch force, whether it were upon the entre and diſſeiſin, or upon the keeping and detaining of the lands, &c.

E And note, that none can have or maintain that action, but he who hath a free-hold in the Lands or Tenements at the leaſt, for tenant for years cannot maintain the action, becauſe the words of the writ are *expulit & diſſeiſivit*, and tenant for years cannot be diſſeiſed &c. and the form of the Writ is ſuch.

F *The King to the Sheriff, greeting. If A. ſhall &c. then put B: &c. to anſwer aſwel us as the foreſaid A. why whereas in the ſtatute in the Parliament at Weſtminſter the 1. year of the reign of K. H. lately King of* England *the 6. held, ſet forth, amongſt others is contained, that if any perſon out of any lands, or tenements with ſtrong hand expelled is and diſſeiſin or peaceably expelled, and after with ſtrong hand held out, or any feoffment or diſcontinuance thereof after ſuch entry to defraud the poſſeſſion of his right, and take it away in any wiſe be made, the party grieved in this part ſhall have againſt ſuch diſſeiſin, the aſſ. of no. diſſ. or a Writ of treſpaſs, and if the party grieved by aſſ or action of treſpaſs ſhall recover, and by verdict or other manner or by due form of law it ſhall be found, that the party defendant into the lands, and tenements with force entred, or thoſe after his entry with force held, the plantiff ſhall recover his damages to the treble, againſt the defendant, and farther fine and ranſom to us he ſhall make, the foreſ B. the foreſaid A. out of his frank tenement in B. with ſtrong hand expelled and diſſeiſin, and him ſo expelled, and diſſeiſed holdeth out of the ſame to the manifeſt contempt of us, and no ſmall damage, and grievance of him A. and againſt the form of the Statute foreſaid and againſt our peace, and have there na. of the Pledg. and this writ witneſs &c.*

And

And the Proceis in that writ is attachment and diſtreſſe
15 H.7.17 and proceſs of Utlagery, &c. G
18. If a man entreth with force in Lands or Tenements into H
9 H.6. 19. which he hath title and right of Entry, and put the Tenant of the Freehold out of thoſe lands or tenem. Now he who is ſo put out with force, ſhall not maintain an action of forcible entry, againſt him who had title or right of Entry, becauſe that that entry is not any diſſeiſin of him he ſhall be reſtored to his poſſeſſion again, and that is by the Statute of 8. H.6. cap. 9. And in this action of Forcible entry, the Plaint. ſhall recover treble damages, A as well for the occupying of the Lands, as for the firſt entry therein. And a man may have a forcible Entry of a B Rent, as well as of Lands. And if a man entreth and G diſſeiſeth another with force, and afterward the diſſeiſee re-entreth again; yet the diſſeiſee may bring his action of forcible entry, and recover his treble damages, although he be ſeiſed of the land at the time of the action brought; but if a man continueth 3 years in peaceable poſſeſſion, without interruption, then he may hold the Lands with force, and ſhall not be puniſhed for that force; and that by
23 H.8.f.5 the ſame Stat. And in the Writ of forcible entry, the De- D
fendant may plead, not guilty, and it ſhall be a good plea; but if the Defendant doth plead matter in Bar, yet have ought in the end of his plea in Bar, to traverſe the Entry with force which is alledged, as to ſay, *Abſq; hoc* that he did enter with force, &c. but yet the demand or Plaintiff ought to anſwer to the ſpecial matter alledged in the Bar, without anſwering to the traverſe with force, &c.
17 H.7.17 And if the eſpecial matter alledged in the bar, be found for the Defendant, he ſhall be excuſed, and the force ſhall not be enquired of, and if it be found with the Plaintiff, and againſt the Defendant, the Defendant ſhall be attainted of the force, and ſhall pay treble damages and coſts, without enquiry of the force, and the ſame is the uſage at this day. And one Joint-tenant, or Ten. in common, may maintain this action againſt his companion, if he be put E
out with force, &c. And if a man do enter with force, and doth detain with force any Lands or Tenements; the party may have his action upon the Stat. of *Northampton*, made *Anno* 2 E. 3 cap. 3. and the writ ſhall be ſuch:

The K. to the Sher. &c. Becauſe we are given to underſt. that F
many

many Malefactors and perturbers of our peace in Conventicles gathered, armed, and in warlike manner arrayed to C. have com, and the closes and houses of certain of our Lieges there by force, and power armed have entred, and the things rents, and reven. and other their goods whatsoever, of certain their possessions there provenient, to take consent and to carry away intend, and to this prepare, to the contempt of us, and to the terror and manifest commotion of certain our people there, and against the form of the statute at North-mpton of arms against the Peace of the Lord Edward lately King of England the third, our Progenitor, not to be born, set forth, and against our Peace, We the Stat. foresi. inviolably to be observed, and the infringers of the same, accord. to the force and effect of the same Stat. will. to cause to be chastised and punished, Command thee, that at the Town of C. and elsewhere in thy County, where necessary it shall be to proclaim and of our part firmly to inhibite cause, that no man of what estate and condition soever there armed against our peace, and the form of the Stat. foresaid shall come, nor armed power, nor ought else there or elsewhere to make, by which our peace, or the Statute foresaid may be hurt, or Our people frighted, troubled, or unduly grieved may be in any wise, under pain of loss of their arms and imprisonment of their bodies at our will, as in the Statute foresaid more fully is contained, and all those which after and against the Proclamat. and inhibit foresaid thou shalt finde, the contrary doing, or by inqu. by thee in manner and form due to be taken thou shalt finde to have done, together with their arms and Armor with them found to be taken and arrested, and the bodies of them arest. in our prison, untill other from us for his delivery, you shall be commanded, safely to be kept, and the arms and Armor foresaid to be appriced, and Us thereof to be answ. cause thou, but Us in Our Chanc. under the seal of the na. of the arest. fores. and of their Arms, and Armor, and what, and whose they are, and of the price or of the true value of the same, and of thy whole doing in this part distinctly and open, without delay advertise, this Writ sending back to Us. Witness, &c.

Writ of Mainprize.

THe Writ of *Mainprize* lyeth properly where a man is taken for suspition of Felony, or endicted of Felony; for

for the which thing by the Law he is bailable, and he offereth ſufficient Sureties unto the Sheriff or others who have authority to bail him, and he or they do refuſe for to let him to bayl; Then he who is ſo kept in priſon may ſue forth ſuch Writ.

The King to the Sheriff, &c. of the part of A. taken and detein. in our Gaol at Glouceſt. for certain Larceny of a certain horſe at S. as is ſaid done, whereof before thee by a certain Inqueſt by thy Office taken he is indicted as is ſaid, to us is ſhown, that although he frequently offered thee Juſtic. mainprize, who him ſhould mainprize, according to the form of the Statute at Weſtminſter of late ſet forth, in which is contained, that thoſe who of ſuch Larcenies before the Sher. or Bailies by inqu. by their office taken be indicted, are repleviſable, ſo that they be of good name; yet thou thoſe mainprize from the foreſaid R. to take, and him by ſuch mainp. from the Gaol foreſ. hitherto haſt delayed to deliver, and [250] *yet delayeſt, to the no ſmall loſs and grievance of him R. and manifeſt peril of his life, and againſt the form of the Stat. foreſaid; and becauſe we will not that the ſame R. in the priſon fore. againſt the form of the ſtat foreſaid longer to be detein. We com. thee, that if the ſame R. be of good name, and by inqueſt before thee, by thy office taken of the Larceny foreſaid, hath been indicted, as foreſ. is and for the ſame Larceny, and on no other occaſion in the priſon foreſaid is detained, and ſhall find thee ſuffic. Mainp. who him will mainpr. to have before our Juſti. our Gaol foreſ. to deliver aſſign. or to be aſſign. at the next comming of the ſame, that Gaol to deliver to ſtand to the right for the Larceny foreſaid according to the Law and cuſtome of our Realm of England then him R. from the priſon foreſaid. In the mean time cauſe thou to be delivered by the Mainprize aboveſaid, according to the form of the ſtatute foreſaid, and have there the names of thoſe Mainpr. and this Writ. Witneſs, &c.*

But note that it is ouſted by the Statute made *An.* 28. *E.* A 3. c. 4. That the Sheriff ſhall not take indictments by writs or Commiſſion directed unto them, And ſo the ſtatute of *Weſt.* 1. *cap.* 15. for thoſe who ſhall be bayled.

And if a man be indicted of felony before the Bayliffs B of the Hundred, and put into the Gaol for the ſame, if he offer ſufficient ſureties to the Bailiffs, and they will not bail him, that he who is ſo impriſoned, may have ſuch a Writ to the Sheriff, Thus,

The

The King &c. of the part of I: it is shown us, that whereas he by certain him emulating of the Larceny of a cert. Ox of Ric. &c. at R. done as is said before the bail of E. of B. of his hund. of P. by inquest, by office of the same bail taken indicted, and on that accasion taken, and in our prison of D. detained is, and although the same I. frequently offered him suffic. mainpr. who him should mainprise according to form of the Statute at VVest. of late set forth in which is contain, &c. as above. VVe command thee that if the same I. of good name be, and by inquest before the same bailiffs by their Office taken of the Larceny foresaid indicted hath been, as foresaid is, and for the same Larceny &c. as above &c.

And there is another Writ for a man who is taken for suspition of felony, and kept in prison, and another Writ for him who is arrested and kept in prison for petty Larceny &c. But this clause shall then be put in the writ, *viz. If of other larcenies before indicted they were not,* (*but this clause*) *so that of good name they be,* shall not be but in that writ, where it is sued for him who is taken for petty Larceny.

And if a man who is of good fame be appelled by an approver, for which cause he is arrested and kept in prison then he may sue a Writ to the Sheriff, to let him be bailed upon good sureties.

And so if a man be appelled by an approver, and be taken and kept in prison, and afterward the approver dieth he may sue a Writ to the Sheriff to set him at liberty upon sufficient bail, if he be not a notorious fellon, although he be not a man of good fame.

E And if a man be indicted as accessary to a murther, as by his assent, and procurement, or reseeit &c. or of aiding or counselling &c. and be taken for the same, he may sue a Writ to the Sheriff to take bail of him, until the principles be convict or attainted, if they be of good fame, but the Statute of *VVest. c.* 15. doth not speak so largely as the writs in the Register do, for the Statute doth not speak, of commandment, aberment or consent &c.

F And if a man be taken by the Kings Commission, and kept in prison for a Felony, or evil doing, he may by his friends put in sureties in the Chancery that he will appear before the Justices &c. and be of good behaviour &c. and that body for body; and thereupon he shall

ſhall have a Writ out of the Chancery unto the Sheriffe, or unto the Conſtable of the caſtle where he is impriſoned to ſet him at liberty if he be impriſoned for that cauſe, and for no oth r.

And if a man be indicted before Juſtices of peace of Treſpaſs, and imprioned for the ſame by proceſs, he may ſue a Writ out of the Chancery, directed to the Sheriff, to take bail of him to appear before the Juſtices at the Seſſions, and ſet him at Liberty; But the Juſtices of peace may take bayl of him, and ſet him at Liberty if they ſo pleaſe. G

If a man be indicted of Treſpaſs before the Juſtices of the Peace, and put in priſon therefore, he may ſue a Certiorari to remove the Indictment into the Kings Bench, directed to the Juſtices of Peace, and a *Habeas Corpus* to the Gaoler that he bring the party at his Coſts before the King in his Bench, ſuch a day, &c. H

And if a man be indicted of foreſtalling and put in priſon for the ſame, he may ſue a writ out of the Chancery to the Sheriffs to take bayl of him to appear before the Juſtices, &c. to anſwer the Treſpaſs, and then to ſet him at liberty. I

And if a man ſueth a Writ of Error upon falſe judgments given againſt him in any City or Borough, that he is condemned, and kept in priſon, he may ſue a writ out of the Chancery directed to the Mayor or Bailiffs of the City or borough, to take Surety to anſwer what ſhall be due to the King, and to the party if the judgement be affirmed; commanding them for to ſet him at liberty. K

And ſo if a man ſueth an appeal of Maihen againſt another, and afterwards he is areſted at the ſuit of the Defendant; or of another in any City or Borough, to the intent that he may not ſue his appeal, he may have a Writ out of the Chancery to the Bailiffs, or Mayor, that he take ſureties to anſwer to the party there, and that they ſet him at liberty; and all thoſe Writs appear in the Regiſter. L

And if a man be appelled of Robbery, he may ſue a Writ out of the Chancery, to the Sheriff, that he take ſureties of him to appear before the Juſtices, &c. and that they ſet him at liberty; and if they have not arreſted him, that he do not arreſt him, if the party offers to find ſuch ſureties to the Sheriff, &c. A

And

B And if a man be ſued in debt or treſpaſs, and be arreſted by *Capias*, or *Exigent*, and kept in priſon, he may ſue a Writ to the Sheriff out of the Chancery, to take bail of him to appear at a day, &c. and that he ſet him at liberty, &c: but now by the Statute made *Anno* 23. *H.* 6. Every Sheriff is bounden to let to bail every one in his cuſtody, who is arreſted, by writ, bill, or warrant, in any action perſonal, or upon indictment of treſpaſs, if they offer reaſonable ſureties to appear at the day &c. in ſuch places where the writ, bill, &c. is retornable, &c. but perſons condemned, or outlawed or excommunicated, or taken for ſuretie of the peace, or perſons who are committed to priſon by the commandment of any Juſtice, and perſons wandring who refuſe to ſerve, who remain in the cuſtody of the Sheriff, all thoſe perſons are excepted, for the Sheriff ought not to let ſuch perſons to bail.

C If a man be condemned in Treſpaſſe before Juſtices of the peace, and be arreſted and put into priſon in the cuſtody of the Sheriff, he may ſue a writ out of the Chancery to the Sheriff, that he take bail of him and ſet him at liberty: and alſo he may have a Writ directed to the Juſtices of the peace, commanding them to take bail of him, and ſet him at liberty: or if the party do finde ſureties in the Chancery to appear and ſtand right in law: then he ſhall have a Writ directed to the Juſtices of peace, or unto the Sheriff, to ſet him at Liberty.

If a man be bounden in a Statute Merchant payable at
D a day certain, and at the day he pay part of the money and hath releaſe from the conuſee of the reſidue, if the conuſee ſue execution and arreſt the party who hath the releaſe, then the Recogniſor may ſue in Chancery, &c. by his friends, and find ſureties, as body for body, that he ſhall appear ſuch a day in the Kings Bench, and pay the money there, if he cannot otherwiſe be diſcharged, and thereupon he ſhall have a Writ to the Sheriff, reciting the whole matter, and how he hath found ſureties in the Chancery as is aforeſaid, commanding him for to ſet him at Liberty: and thereupon the Sheriff ought for to ſet him at liberty, and if he will not ſo do, he ſhall have an *Alias* and a *Pluries*, and an attachment againſt the Sheriff, &c.

E And if a man be condemned in any Court, and he is taken in execution, and afterwards he is removed by a *Habeas Corpus*,

Corpus, or a *Certiorari* in Chancery; he ſhall not be bailed, but ſhall be remanded to priſon, there to remain according to the law until he hath ſatisfied the party-plaintiff, &c. A. 2. H. 5. *cap* 2.

And two Juſtices of the Peace, whereof one is of the *Quorum* may let men ſuſpected of felony, or other perſons who are bailable to bail untill the next general Seſſions or Goal delivery. but the Juſtices of Peace are bound there to teſtifie at the next general Seſſions, or Goal delivery, that Recognizance unto the Juſtices, &c. upon pain of forfeiture of 10. l. and that is by the Statute of 3. *H.* 7. *cap.* 3. F

And he who is acquitted of murther within the year at the Kings ſuit ſhall not be releaſed out of priſon untill he finde ſureties to appear at every time the Juſtices will require him until the end of the year &c. becauſe the party may ſue his appeal after againſt him within the year *&c.* G

And what perſons are bailable, and what not appeareth by the Statute of *VVeſtminſter*, 1 cap. 15. H

And the Juſtices of Goal delivery may puniſh thoſe who let men to bail, who are not bailable the Statute of *Finibus* cap. 3. I

And *An.* 4. E. 3 *cap.* 2. the Marſhall of the Kings houſe cannot let thoſe to bail, who are indicted or appelled of felony, who are committed to them &c. but the Juſtices of the Kings Bench may puniſh them &c. And *an.* 5. *E.* 3. *cap* 8. they cannot let to bail thoſe who render themſelves at the Exigent in felony, and committed to the Marſhal, nor by Baily nor Baſton, and if they do, they ſhall be impriſoned for half a year; and fined at the Kings pleaſure.

VVrit of Diem clauſit extremum.

THe writ of *Diem clauſit extremum* properly lieth, where the Kings tenant who holdeth of him *in capite*, as of his Crown by Knights ſervice, or in Socage dyeth ſeiſed, his heir within age, or of full age, then that Writ ought to iſſue forth, and the ſame ought to be at the ſuit of the heir &c. for upon that when the heir cometh of full age, he ought for to ſue livery of his lands out of the Kings hands. And the writ is ſuch. K

The

The King to his beloved W. of K. his Eſcheator in the County of D. v n, greeting; Becauſe *W. of S. who held of us in chief is deceaſed as we have received, we command thee, that all the Lands and Tenements of which the ſame W. was ſeiſed in his demean as of fee, in thy Bayl. the day he dyed, without delay thou take into our hand, and thoſe ſafely thou cauſe to be kept, untill other thereupon we ſhall command, and by the oath of honeſt and legal men of thy Bail. by whom the truth of the matter may be better known, diligently inquire thou, how much of Land or Tenements the ſame W. held of us in chief, as well in demean as in ſervice the day he dyed, and how much of others, and by what ſervice, and what the value of thoſe Lands and Tenements is by the year in all iſſues, and what day the ſame W. dyed, and who his next heir is, and of what age, and the inquiſition thereupon diſtinctly and openly made, to us in our Chancery under thy Seal, and the ſeals of them by whom it was made, without delay ſend thou, and this Writ. Witneſs, &c.*

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4 Eli. Dyer 213. They ſhal be only of the Lands in ſocage in Capite, and not of the lands holden of other Lords.

A And if the King hath a Ward, and afterwards one who holdeth of the ſaid Ward his Lands by knights ſervice dyeth, his heir within age, or of full age, than a *Diem clauſit extremum* after his death, ſhall iſſue in this form. Stamf. 13. Plow. com. 204.

The King to his beloved, &c. Becauſe I. of S. who of the here, of W. of O. deceaſed, who of us held in chief within age, and in our Wardſhip being held by Knights ſervice, is deceaſed, as we have received, we command thee that all the Lands and Tenements, &c. and by the Oath, &c. how much of Lands and Tenements the ſame I. held of the heir foreſaid, and who is his next heir, &c. as above.

B And if the heir dyeth being in the cuſtody of the King, then ſhall iſſue another Writ of *Diem clauſit extremum*, in this form.

The King &c. Becauſe R. of H ſon and heir of I. of H deceaſed, who of us held in chief lately while within age, and in our wardſhip he was, deceaſed, as we have received, we command thee that by the Oath, &c. thou inquire, what Lands, and what Tenements by the death of the foreſaid I. and by reaſon of the Minority of the heir of the aforeſaid I. to our hands came, and ſo in our hand are, and how much thereof is held of us in chief, and how much of others, and by what ſervice, and how much, &c.

C And if the Kings Tenant dieth who holdeth by knights

ſervice, and his wife be endowed, and the King hath the Wardſhip of the Lands for the non-age of the heir, and afterwards the Tenant in dower dyeth, the Lands being in ward in the Kings hands, Then a *Diem clauſit extremum* ſhall be ſued in this manner,

The King to his beloved N. of B. Mayor of his City of London, *and to his Eſcheator in the ſame City greeting. Becauſe E. which was the wife of I. of B. lately deceaſed, which certain Lands, and certain Tenements of us held in Dower of the Inheritance of the foreſaid I. ſometime her husband is deceaſed, as we have received, we command thee that all the Lands and Tenements which the ſame E. ſo held in Dower of the Inheritance foreſaid in thy Bail. &c. by the oath, &c. diligently inquire thou, what Lands, and what Tenements the ſame E. ſo held in Dower of the Inheritance foreſaid in thy Bayliwick the day ſhe dyed, and how much thereof of us is held in chief, and how much of others, and by what ſervice, &c.*

Otherwiſe after the death of Tenant for life of Lands of which the King hath the reverſion in ward, *Becauſe A. certain Lands, and Tenements of the Inheritance of E. couſen and heir of H. of* P *deceaſed, who of the King held in chief, within age, and in the Kings Wardſhip being held for his life, is deceaſed, &c. we command thee, &c.* Or thus, *becauſe A. who certain Lands, and certain Tenements of us held by the courteſie of* England *of the inheritance of M. his wife lately dead is deceaſed, we command thee &c.*

And if Tenant for life, the remainder to the King and his heirs dyeth; the King ſhall have a *Diem clauſit extremum*, in this manner; *Becauſe A. which was the wife, &c. who certain Lands and certain Tenements held for her life, and which after the death of her A. to us and our heires ought to remain, is deceaſed, &c. therefore we command thee, &c. who the ſame ſo held, &c. and which after the death &c. ought to remain &c.* Or thus, *after the death of the foreſaid B. to our hands by reaſon of the Minority of the aforeſaid heir came*, &c.

And there are divers other forms of Writs in the Regiſter after the death of Tenant for life, or Tenant in Dower.

And if the King hath the Temporalties of the Biſhop in his hands, and afterwards one who holdeth by knights ſervice of thoſe Temporalties dyeth, his heir in Ward to the King,

King, then the *Diem clauſit extremum* ſhall be in ſuch form.

The King &c. Becauſe A. of the Archbiſhoprick of Canterb. vacant, and in our hand being, held by Knights ſervice, is deceaſed, &c. we command thee &c. of which the ſame A. was ſeiſed in his demean as of fee, &c. and held of the Archbiſhoprick foreſaid, without delay, &c.

H And if the King hath an Idiot in his Cuſtody, and afterwards the Idiot dieth, the Writ of *Diem clauſit*, &c. ſhall be thus.

The King &c. Becauſe B. of C. lately a fool and an Idiot, whoſe Lands and Tenements by reaſon of the fooliſhneſs of the ſame B. in our hand are, is, &c. as we have received, we command thee, that by the oath, &c. diligently thou inquire, which Lands, and which tenements by reaſon of the fooliſhneſs of the foreſaid B. into our hand were taken, and as yet in our hand are held, and by what ſervice, and what the value of thoſe lands is, &c. and who is next, &c. and the inquiſition, &c. [253]

A And if a writ of *Diem clauſit extremum* be ſent to the Eſcheator, and the Eſcheator be removed from his Office, or dyeth before he make the enquiry, &c. Then ſhall iſſue forth another writ of *Diem clauſit extremum*, which ſhall be ſuch.

The King &c. Whereas lately we were given to underſtand, that I. of B. who of us held in chief, is deceaſed, we commanded our beloved W. of O. lately our Eſcheator of the County foreſaid, that all the lands and Tenements, &c. he ſhould take, &c. as above, Mutatis mutandis. *And the ſame W. from the Office foreſaid is now removed, by which execution of the Writ foreſaid cannot be made, we willing to be certified, command thee, that by the oath, &c. diligently upon the premiſes thou make Inquiſition, and that diſtinctly, &c. Witneſs, &c.* And another form of Writ in this manner.

The King to his beloved, &c. Whereas lately we were given to underſtand that I. of B. who of us held in chief is deceaſed, we commanded our beloved and truſty H. of B. lately our Eſcheator in the ſame County, that all the lands, &c. without delay he ſhould take into our hand, &c. untill other thereupon we ſhould command, and by the oath, &c. he ſhould inquire how much of lands, &c. (as in the firſt writ) and the ſame H. before the aforeſaid VVrit was executed, and from the Office foreſaid was removed, we willing upon the premiſes fullier to be certi-

fied, command thee that upon the Articles foreſaid, and every of them diligently thou make Inquiſition, and that diſtinctly and openly made, &c. as above, &c:

But if the firſt Eſcheator do make inquiry by force of the Writ, and afterwards dyeth before the Inquiſition be returned into the Chancery, &c. Then a *Certiorari* ſhall be awarded againſt his Executors to certifie the ſame Inquiſition; becauſe it is a good matter of Record when it is found; and the Jurours have put their Seal unto the ſame.

If the Kings Tenant who holdeth of him by Knights ſervice dyeth, his heir within age, and now it is awarded B within one year after his death, then after the year is paſt, a writ called a *Mandamus*, ſhall iſſue forth; and that Writ doth not vary in words of the Writ from the *Diem clauſit Extremum*; and the Writ is ſuch.

The K. to his beloved W. of E. his Eſcheator in the County of B. *greeting. We command thee that by the Oath of honeſt and legal men of thy* Bailywick *by whom &c. diligently thou inquire, what lands, and what Tenements I. of* B. *held of us in chief as well in demean, as in ſervice in thy* Bailtwick *the day he deceaſed, and how much of others, and by what ſervice, and what the value of the Lands and Tenements is by the year in all iſſues, and what time the ſame I. deceaſed, and who is next &c. and of what age and who or whom theſe lands and Tenements from the time of the death aforeſaid hath occupied, and the iſſues and profits thereof taken, by what title, in what manner, and how &c. and the inquiſition, &c.*

And note, that if a man ſue a Writ of *Diem clauſit extre-* C
7o. 1. Eliz: *mum*, it ought to be ſued within the year, and after the
Dyer 170. year he ſhall have that Writ of *Mandamus*, and not a *Diem*
5 E. 4. 13. *clauſit extremum*; and if a man ſue forth a Writ of *Diem clauſit extremum*, and he loſeth the Writ, or the ſame is taken from him with force againſt his will, he ſhall not have a new *Diem clauſit, &c.* But if he hath a *Diem clauſit extremum*, and the heir be found within age, and that the King hath title to him, becauſe that his Anceſtor held of the King at the time of his death by Knights ſervice, and afterwards the heir dyeth being in ward to the King, and no writ of *Diem clauſit extremum* within the year after his death, yet there a *Mandamus* ſhall not be awarded after the year of the death of the ward, but a new writ of *Diem clauſit extremum*, becauſe the heir dyed in Ward to the King;

and

and that is by the Rule of the Regiſter: Or if the Kings
D Tenant who holdeth of the King by knights ſervice in chiefdyeth, The heir may have a ſpecial Commiſſion directed to certain perſons to enquire what Lands, &c. his Father held the day of his death, &c. and that ſpeciall Commiſſion ſhall be as good for the heir as a writ of *Diem clauſit extremum* after the death of his Anceſtor, and upon ſuch Commiſſion and Inquiſition taken thereupon, and found and returned in the Chancery, the heir at full age ſhall have his Livery as well as upon a Writ of *Diem clauſit extremum* ſued forth, &c. But upon a generall Commiſſion to enquire of all Wards, &c. The Law is otherwiſe; For the heir upon ſuch a Commiſſion and Inquiſition returned, ſhall not have Livery.

When the heir who is in ward to the King by reaſon of Lands holden in *Capite* cometh to his full age, Then he ſhall have a Writ directed to the Eſcheator to prove his age, before he ſhall have Livery of his Lands, and the Writ is ſuch.

E *The King to his beloved I. of B. his Eſcheator in the County of B. greeting. Becauſe A. of B. who M. Siſter, and one of the heirs of R. deceaſed who of the L. Edw. lately King of* England *our Grandfather held in chief married, ſaith that the foreſaid M. of full age is, and prayeth from us the Lands and Tenements which are of the Inheritance of her M. and of which one part in our hand, and the other part in the wardſhip of I. of H. of the Commitment of our ſaid Grandfather, untill the lawfull age of the ſame heirs are, to be rendred him, wherefore we will that the ſame M. which at G. in the County of N. is born, and in the Church of the ſame Town was baptized as is ſaid, her age may prove before thee, we command thee that at a certain day and place, which for this ye ſhall provide, that proof, as well by the oath of Knights, as of legal men of thy Bayliwick, by whom that proof may be taken, and the truth of the age foreſaid better known and inquired, thou take, and warn the foreſaid I. that then he be there to ſhow, if any thing for himſelf he have, or to ſay know, why to the foreſaid H. and the foreſaid M. as to her who of full age is, if of full age ſhe be, the Lands and Tenements foreſaid we ought not to render, and that proof ſo taken to us under thy ſeal, and the ſeals of them by whom it was taken, without delay ſend thou and this Writ. Witneſs, &c.* [254]

And by that Writ it appeareth, that the writ *de etate probanda* ſhall be directed unto the Eſcheator of the County where the heir was born, and not where the Lands of the heir ly; But yet it ſeemeth reaſonable, that he may ſue it where the Lands lye: For it may be, that he was born where the Kings writ doth not run, or in *Ireland*, or beyond the Sea, as in *Calice* &c.

There is another form of writ thus; *The K. &c. becauſe M. of F. ſon and heir of F. deceaſed, who of us held in chief, ſaith that he of full age is, and prayeth from us that the Lands and Tenements which are of his inheritance, and in our Wardſhip until the lawfull age of the heir aforeſaid, to be rendred him, wherefore we will, &c. unto may be better known, and inquired, thou take, and then thus, and that proof &c. as above &c.*

There is another form when the King committeth the Ward during his non-age, Then when he will ſue in *etate probanda*, he ought to make mention of the ſame Commitment.

And if a man be in ward unto the King by reaſon of the temporalties of a Biſhoprick in the Kings hands, when the heir cometh of full age, he ought for to ſue forth an *etate probanda*, and the writ ſhall mention the whole matter; and and yet he doth not hold of the King in *capite*. A

And when the heir hath proved his age; and the writ is returned, then he ought to do his Homage to the King, or agree with the King for the Reſpiting of the Homage, and he ſhall have ſuch writ. B

The K. to the ſame Eſcheator, &c. Know that we have taken the homage of I. of H. ſon and heir of B. of H. deceaſed, of all the Lands and Tenements which the ſame B. his father held of us in chief the day he dyed, and thoſe Lands and Tenements we have rendred him. And therefore we command thee, that taking ſecurity of the foreſaid I. his reaſonable relief to pay us at our Exchequer, the ſame I. of all the Lands and Tenements foreſaid, and of which the foreſaid B. his father was ſeiſed in his demean as of fee, in thy Bailiwick the day he dyed, and which by occaſion of the death of the ſame B. are taken into our hand full ſeiſin thou cauſe to have, ſaving the right of every man, and ſaving the reaſonable Dower of Mawd, which was the wife of B. and to her of the Lands, and Tenements aforeſaid, according to Law, and Cuſtome of our Realm

Realm of Enſland contingent, to her by us to be aſſign. witneſs &c.

C And the writ aforeſaid lyeth, where the heir was of full age at the time of the deaeh of his Anceſtor, and ſueth his livery, but if the heir were in ward, and hath proved his age, then he ſhall have a writ thus,

The King &c. Becauſe N. of E. ſon and heir of R. of C. deceaſed, who of the Lord Edword lately king of Eng our Grandfather held in chief, and his age before thee ſufficiently hath proved, as by the proof by our command taken, and in our Chancery returned is found, we have taken the homage of him N. of all the Lands and Tenements which the ſame R. his father held of our ſaid Grandfather in chief, the day he dyed, and thoſe Lands and Tenements have rendred him, and therefore we command thee, that the ſame N. of all his Lands and Tenements foreſaid, and of which the foreſaid R. his father was ſeiſed in his demean as of fee, in thy Bailywick the day he dyed, and which by the death of the ſame R. into the hand of our ſaid Grandfather were taken, and in our hand ſo taken are, full ſeiſin thou cauſe to have, ſaving the right of every man, witneſs &c.

And if the husband ſeiſed in fee in the right of his wife be outlawed of Felony, for which the Lands came into the Kings hands, and afterwards the Husband who is outlawed dyeth; a Writ of *Diem clauſum extremum* ſhall be awarded, which ſhall be ſuch.

Becauſe A. whoſe Lands and Tenements which he held of the Right and Inheritance of N. lately his wife yet living, to the hands of the Lord Ed. lately king of Engl. the fourth after the Conqueſt, by occaſion of a certain Outlary againſt him A. for a certain Felony, whereof indited he was, as is ſaid publiſhed, came, in the hand of the L Henry &c. our Father were, and ſo in our hand are, is deceaſed, &c. we command thee, that by the oath &c. thou inquire what Land, and what Tenements by reaſon of the felony foreſaid to the hands of him lately King came, and yet in our hand ſo are, and of whom they are held, and by what ſervice, and in what manner, and how, and what the value of the Lands and Tenements is in all Iſſues, according to the true value of the ſame, and who &c. thoſe Lands and Tenements from the time of the Felony foreſaid done hath occupied, &c. and the iſſues and profits thereof taken, &c. by what title, in what manner, and how, and the inquiſition, &c.

Quæ plura.

[255] THe form of the Writ of *Quæ plura* is ſuch. A

The King to his Eſcheator, &c greeting, Becauſe we are given to underſtand that A. deceaſed, who of us held in chief, held the day he died more lands and tenements in the County foreſaid, then in the inquiſition thereof, after the death of the foreſaid A. *by our command taken, and into our Chancery returned, is ſpecified, we command thee that by the oath of honeſt, &c. thou inquire what more lands and tenements the ſame* A *held in the County foreſaid, the day he dyed, and of whom, &c. theſe more Lands and tenements are held, and by what ſervice, and what their value is by the year in all iſſues, and the inquiſition, &c.*

The Writ of *Melius inquirendo* lyeth, where the firſt Office is found by virtue of a writ of *Diem clauſit extremum*, the which Office wanteth certainty in divers points, as in the tenure of divers lands, or in the value of any of them, &c. then ſhall iſſue ſuch writ of *Melius inquirendo*, but if the firſt Office be found by the *Eſcheator virtute officii ſui*, and not by virtue of any Writ, or Commiſſion, and the office wanteth certainty in divers things as before; then a *Melius inquirendo* ſhall not iſſue forth, but the Office and inquiſition returned ſhall be as void, becauſe it is not found by virtue of any commiſſion, or writ, but only, *ex officio* of the *Eſcheator*, without any command to him to do the ſame; and therefore the ſame ſhall be taken as void, if it want certainty in any point. B

Melius inquirendo.

THe form of the writ of *Melius inquirendo*, is ſuch. C

The K. to his Eſcheat. &c. greeting; whereas by a certain inquiſition before H. our Eſcheat, in the foreſaid County by our command taken, and into our Chancery returned is found, that N. deceaſed held divers Lands and Tenements, with the appurtenances in the County aforeſaid, and who the next heir of the ſame N is, of the part of his father, the Jurors of the inquiſition foreſaid know not, yet of the part of K. mother of the aforeſaid N.W.B. *is his next heir, and of twenty one years of age, and more, and becauſe in the inquiſition foreſaid, who is the next heir of him N. is not at all ſpecified, we*

we command thee that by the oath, &c. thou inquire who is the next heir of the foreſaid N in what manner and how, and the inquiſition, &c.

D There is another form of Writ of *Melius inquirendo*, becauſe he doth not ſpecifie in the inquiſition what eſtate the Tenant had in the lands; or before he doth not ſhew in the office, of whom, or of who the lands were holden; or becauſe he doth not mention in the Writ the true value; And the King is informed, that the lands are of greater value then are certified by the Office. And note that a *Melius inquirendo* ſhall be awarded upon a ſurmiſe made in Court, that the lands are of greater yearly value, then is declared by the Office; and upon like reaſon upon a ſurmiſe made, that they are holden by other ſervices, or that the Tenant was ſeiſed of other lands, or other eſtate, then is mentioned in the Office; a *Melius inquirendo* ſhall be awarded.

Writ of Livery.

E THere is another form of Writ of *Livery*, where the Kings Tenant in Capite dyeth, his heir within age, and the King ſeiſeth the ward, and afterwards that heir dieth within age, and in ward to the king, for which the lands come unto his heir who is within age, and in ward to the king; now when that heir cometh of full age, he ſhall have a writ of *Livery* in this form.

The K. to his beloved &c. his Eſcheat, in the County of I. greeting, becauſe I. brother and heir of S. ſon and heir of S. deceaſed who of us, as of the honour of H. in our hand being held by the ſervice of rendring to the ward of the Caſtle of Dover, *ten ſhillings the year, his age before* Rog. *of W. lately our Eſcheat, in the County foreſaid, ſufficiently hath proved, as by that proof by our command taken, and into our Chancery returned, is found, we have taken the homage and fealty of him I. brother of S. of all the lands and tenements which the foreſaid I. S. the father held of us, as of the honour foreſaid the day he dyed, and which after the death of the foreſaid I. S. the father, and by reaſon of the minority of him S. which S. while within age, and in our ward-ſhip he was, to our hands came duely, and to the ſame I. brother of S. all the Lands and Tenements, with the appurtenances we have rendred, and therefore we*

we have commanded thee, that to the ſame I. brother of S. of all the lands and tenements foreſaid, with the appurtenances, and of which the aforeſaid I. S. the father was ſeiſed in his demean as of fee, in thy Bailywick the day he dyed, and which by the death of him S. the father, and by reaſon of the minority of S. to our hands came, and ſo in our hand, by reaſon of the minority of the ſame I. brother of S. as yet are, full ſeiſin thou cauſe to have, ſaving the right of every man witneſs, &c.

And when an heir ſhall have livery at his full age, and holdeth one Manor in Capite, of the Kings and Knights ſervice, and holdeth other lands in ſeveral Counties of others, then a writ ſhall iſſue to the Eſcheator of the County, where he holdeth in Capite, and the form ſhall be ſuch. *Scias quod Cepimus homagium, &c.* And the writs to other Eſcheators, begin thus, *whereas we have taken the homage, &c.*

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21 E. 3. 41. ac. Of the honor of Barkenſted. ſo 29. H. 8. 24.

And it appeareth by the Writ before, that to hold land to render a certain Rent for the guarding of the Caſtle of *Dover* ſhall be a tenure in capite, and by Knights ſervice; and it may be that in antient time, that he ſhould guard the Caſtle, and that now the King hath taken rent for the ſame, and yet the taking of the rent, doth not alter the nature of the tenure, *Quære.* A

If two men by Licence purchaſe lands holden of the King in Capite, afterwards one of them dyeth, the other ſhall have the Lands *cum exitibus* out of the Kings hands upon the matter found by inqueſt, but by the Regiſter he ought to ſhew the Licence in the Chauncery. B

4 Eliz. Dyer 213. rule ac *Plow.* Com. 209. 204. 20. E. Dyer 362.

And if the Kings Tenant who holdeth in ſocage dyeth his heir of the age of 14. years and more, and the King ſeiſeth the Lands, he ought for to ſue livery of them. But it ſeemeth the King ought not for to ſeiſe the other lands which he holdeth of other Lords by other ſervices &c. and if he do, the other Lords ſhall have a Writ of *amoveas manum*, which is called an *Ouſter le mayn; una cum exitibus, &c.* ſo as they ſhall have the iſſues and profits thereof which were taken by the King. And the form of the writ is ſuch. C

The King to his beloved A. *his Eſcheator, &c. becauſe we have received by the inqueſt which by thee we have cauſed to be made, that I. of T. deceaſed held in demean as of fee the day*

day he dyed one Meſſuage, and one Oxgange of Land, with the appurtenances in K. of us in chief, as of the honour of the Abby of M. in our hand being by fealty, and by the ſervice of three ſhillings and nine pence, yearly to be paid us, and that he held not any other Lands and Tenements of us in chief, as of the Crown, in thy Bailiwick the day he dyed, by which the wardſhip of the Lands and Tenements of the foreſaid I. which were, the day aforeſaid to us ought to belong, and that he held the day foreſaid diverſe of other Lands and tenements of divers Lords, for divers ſervices, and that N. ſon of the foreſaid I. is his next heir, and of the age of ſixteen years and more, we have taken the fealty of him N. of the Meſſuage and Lands foreſaid and thoſe have rendred him, therefore we command thee taking ſurety of the aforeſaid N. for paying us his reaſonable relief at our Exchequer of the Meſſuage and lands foreſaid which by occaſion of the death of him I. thou haſt taken into our hand, full ſeiſin thou cauſe him to have ſaving the right of every man, but of the other Lands and Tenements which the foreſaid I. held, of other Lords in thy Bailiwick the day he died which likewiſe by occaſion of the death of the foreſaid I. thou didſt take into our hand, thou intermeddle not, ſaving ours and every others right, the iſſues if any of the Lands and Tenements which of other Lords are ſo holden taken to thoſe to whom they belong deliver thou.

And by this writ it appeareth that the heir in Socage being at full age at the time of the death of his Anceſtor ſhall have *Livery cum exitibus*, but if he were within the age of 14. years at the time of his anceſtors death, his *prochin ames* muſt ſue an *Ouſter le main cum exitibus*; But the other Lords ſhall have an *Ouſter le Main* for the Lands holden of them by Knights ſervice *cum exitibus*. 45 E. 3. 19. 35. H. 6. 52. *Stam. prerogat.* 13.

D And if the King hath the cuſtody of an Idiot, and of his Lands which are holden of the King in capite, and the Idiot dyeth, and his heir be of full age; the heir ſhall have a Writ of Livery in this form.

The K. to his Eſcheator, &c. becauſe we received by the inqueſt which by thee we cauſed to be made, that diverſe lands and Tenements with the appurtenances in O. into the hand of the Lord Edward ſometimes King of England our grandfather by reaſon of the fooliſhneſſe, and Idiotiſm of W. of P. now deceaſed taken were, and in our hand ſo are, and that the ſame

ſame Lands, and Tenements are held of us in chief, as of the Abby *of M. in our hand being, by the ſervice of the eight part of one Knights fee, and to do ſuit to our* Wapentake *of* Holderneſs, *from three weeks to three weeks, and to render to the Ward of our Caſtle of* Skipton *at half Lent ſeventeen pence, and that* Geoffry *Son of* William *of* Redmain *couſen of the foreſaid* William *is next heir of the ſame* William *and of full age, we have taken the fealty of the ſame* Geoffry *of all the Lands and Tenements foreſaid, and thoſe to him have rendred, and the Homage of the ſame* Geoffry *unto the Feaſt of Eaſter, next to come of our ſpecial grace have reſpited, and therefore we command thee, that taking ſurety of the foreſaid* Geoffry *his reaſonable relief to render us at our Exchequer, the ſame G. of all the Lands and Tenements foreſaid in our hand being full ſeiſin thou cauſe to have, ſaving the right of every man; witneſs, &c.*

And when the heir in ward unto the king is of full age, he ſhall have a Writ out of the Chancery unto the keeper of the privy ſeal, teſtifying that he is of full age, and thereupon he ſhall have a privy ſeal unto the Kings Chamberlain to receive his Homage, and when he hath taken his Homage, he ſhall have a writ from the Chamberlain to the Chancellour teſtifying that he hath taken his Homage; and thereupon he ſhall have a writ of Livery. And all this matter appeareth at large in the abridgements in the livery, which ſee there. E

And if three Coparceners be in ward to the King, the Coparcener who firſt cometh of age ſhall ſue Livery, and ſhall have partition made thereupon. F

And if an heir female be in ward to the King, and holdeth of other Lords in Socage. Now when ſhe cometh of the age of 14. years ſhe ſhall not ſue livery of the Lands holden in Socage, but ſhe ſhall tarry until her age of 16. years if ſhe be not married before that age, for ſhe ſhall not ſue livery but once for her lands, &c. G

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And if the heir of full age ſueth his livery and omitteth any parcel of his inheritance, as of an advowſon or a reverſion, or one acre of lands, which is not found by the writ of *Diem clauſit extremum*, and thereupon ſueth his livery, if it be found afterwards by an other office, that his anceſter dyed ſeiſed of that advowſon, reverſion or acre of Land which was not found by the firſt office upon A

on which he ſued his livery before, then the King may reſeiſe all the lands, &c. and the heir ſhall anſwer the King for all the Rents, iſſues, and profits received in the mean time by the heir, &c.

B If the Kings Tenant holdeth by Knights ſervice and in Capite, and alſo holdeth other lands of the Arch Biſhop of Canterbury by Knights ſervice, and dyeth ſeiſed his heir within age, the King ſhall have the Lands holden of him in Ward, and the Arch-Biſhop ſhall have the other lands holden of him in Ward; and that is by the Statute of *Prerogativa Regis, cap.* 1. And if the King ſeiſeth all the lands, The Arch-biſhop ſhall have an *Ouſter le Main cum exitibus.*

C And if the Kings Tenant who holdeth in Capite and by Knights ſervice dyeth ſeiſed, and the Danger doth abate, for which the heir at full age, recovereth by aſſiſe of *Mordancester*, yet he ought for to ſue his Livery, and to do his Homage, and the abator ſhall anſwer the King the mean profits and iſſues received. And the Writ *de ætate probanda* may be directed to certain Commiſſioners to enquire of the age of the Enfant, as well as unto the Eſcheator; and the form of the Commiſſion is ſuch.

Commiſsion pro Ætate probanda.

D *The King to his beloved, &c. Know ye that we have aſſigned you to inquire by the Oath as well of Knights as others honeſt and Legal men of that venew of N. in the County of L, if I. ſon and heir of B. at N. was born, and in the Church of the ſame town baptized, and who by reaſon of his minority in our wardſhip is, of full age is, or he ſaith or not, and therefore we command you, that at a certain day and place, which to this ye ſhall provide, that inquiſition ye make and it diſtinctly and openly made to us in our Chancery without delay ye ſend, and this Writ, for we have commanded our Sheriff of* Lincoln *that at the day and place which ye ſhall make him know to come he cauſe, &c. In teſtimony, &c.* And thereupon a Writ ſhall be ſent to return an enpannel before the Commiſſioners at a certain day by them appointed; and the Writ ſhall be ſuch.

The

The King to the Sheriff, &c. We command thee that thou ſummon by good ſummons twelve as well Knights as others, honeſt and legall men of the venew of N. *who may be before our beloved and truſty* A B *and* C. *and thoſe which to them we ſhall aſſociate, at a certain day and place which the ſame* A. B. *and* C. *ſhall make thee to know, ready by oath to recogn. if* F. *ſon and heir of* D. *at* N. *born, and in the Church of the ſame Town baptized was, who by reaſon of his minority in our wardſhip is, be of full age, as he ſaith, or not; and in the mean time to the Church and Town let them go, and the truth of the age foreſaid diligently inquire, and their names to be imbreviated cauſe thou, and warn* E. *and* S. *Guardians of the land of the foreſaid heir, that then there they be to hear that recogn. and to ſhew if any thing ought to hinder why the foreſaid* I. *thoſe his lands and Tenements ought not to have, and have there the names of the Brev. and this writ, &c. Witneſs, &c.*

And thereby it appeareth, that if the King hath committed the wardſhip of the Land unto another, that the Committee ſhall be warned to be there, but if the King hath the lands in his own hands, then that clauſe, *Et ſcire facias E. et S. Cuſtodibus, &c.* ſhall be omitted out of the writ.

And by the Rule of the Regiſter, A woman ſhall do homage and fealty; and ſhall pay a Relief when ſhe ſueth her livery, if ſhe be of felling at the time of the death of her Anceſtors, and if ſhe hath a husband, if they have iſſue when they ſue livery, then the husband ſhall do the Homage and Fealty: but if they have no iſſue, then the husband ſhall do onely Fealty. F

And if two joint-tenants be, who hold of the King by licence of purchaſe; and one of them dyeth, the other ſhall have an *Ouſter le Main cum exitibus*, but if the purchaſe be made without licenſe, then not, becauſe that the King ſhall ſeiſe the Land for the Alienation without licence. G

And if the Kings Tenant hath Lands in ſeveral Counties, ſome holden of the King, and ſome of other Lords, the writ of Livery ſhall be directed unto the Eſcheator of that County, where the land which he holdeth of the King in Capite lyeth, and the Writ ſhall begin *Scias quod Cepimus homagium, &c.* and he ſhall have writs unto the H

Eſcheato

Eſcheators of the other Counties, and the Writs ſhall begin thus; *Cum Ceperimus, &c.*

VVrit of Livery post mortem Patris & Matris.

I VVRit of Livery after the death of the Father and mother, &c. lyeth, where the Father and mother hold ſeverally lands in Fee of the King in Capite, and they dy, their heir of full age, he may ſue any writ of Livery to have livery of the lands of them both, and is not bounden to ſue ſeveral writs, as ſeveral heir to them, and the form of the writ is. [258]

The King to his beloved N. of W. his Eſcheator in the County of S. greeting. Know ye that we have taken the homage and fealty of R. of B. ſon and heir of R. of B. Knight, and I. his wife deceaſed, to us due for all the Lands and Tenements which the foreſaid R and I. held of us in chief the dayes they dyed, and we have rendred him thoſe Lands and Tenements with the appurtenances, and therefore we command thee, that taking ſurety of the foreſaid R. his reaſonable relief to pay us, at our Exchequer to the ſame R. of all the Lands and Tenements foreſaid, with the appurtenances in thy Bailiwick, and of which the foreſaid R. and I. were ſeiſed in their demean as of fee, in thy Bailiwick the dayes they dyed, and which after the death of the foreſaid R. and I. were taken into our hand, full ſeiſin thou cauſe to have, ſaving the right of every man, witneſs &c.

VVrit of livery after the death of Tenant by the Curteſie.

A THere is another form of writ, after the death of Tenant by the curteſie, thus,

The King to his beloved his Eſcheator in the County of Linc. *&c. Know ye that we have taken the homage of G. of N. ſon of I. of N. deceaſed of all the lands and tenements which the ſame I. held by the Curteſie of* England *the day he dyed, as of the right of N. lately his wife now deceaſed, who of us held in chief, mother of the foreſaid G. whoſe heir he is, to us due, and thoſe Lands and Tenements to him have rendred, and therefore we command thee, that taking ſurety of the ſaid G. his relief to pay us, at our Exchequer, the ſame G. of all his lands*

Lands and Tenements foresaid with the appurtenances, which by the death of the foresaid I. were taken into our hand, full seisin thou cause to have, saving the right of every man, witness, &c.

And thereby it appeareth, That the Tenant by the curtesie shall have the Lands after the death of his wife, without issuing an *Ouster le Main* for those Lands holden of the King, but that the heir after his death shall sue his Livery for them, &c. because that the Tenant by the curtesie do remain Tenant to the King.

And if a man have Lands which are held of the King in *Capite*, by the curtesie, and he hath other Lands in Fee and dyeth; his heir shall sue Livery as well for the Lands whereof the Tenant was seised in Fee, as for the Lands which he held by the curtesie, although the lands of which the Tenant by the Curtesie was seised in Fee were not holden of the King in *Capite* &c. because that as well those lands are seised into the Kings hands, as the Lands which he held by the curtesie, and the writ shall be such.

The King to his beloved, &c. his Escheator in the County of York, *greeting, Know ye that we have taken the homage and fealty of G. son and heir of W. of S. and I. which was the wife of the same W. of S. deceased, of all the Lands and Tenements which the foresaid W. of S. his father held, as well by the Curtesie of England of the Inheritance of the foresaid I. sometime his wife after the death of her I, as in his demean as of fee the day he died, and to him those Lands and Tenements we have rendred, and therefore we command thee that taking surety of the foresaid G. the son, his reasonable relief to pay us at our Exchequer the same I. son of W. of S. of all his lands and Tenements foresaid with the appurtenances, which the foresaid W. of S. his father held as well by the Curtesie of* England *after the death of the foresaid I. sometime his wife, as in his demean as of fee, in thy Bailywick the day he dyed, and which after the death of him W. of S. were taken into our hand, seisin thou cause to have, saving the right of every man, witness, &c.*

And if the Kings Tenant dyeth, and after his death his wife be endowed, then after the death of the Tenant in Dower, the lands which she held in Dower shall be seised into the Kings hands, and the heir shall sue livery of them then; and the Writ shall be such.

Writ

Writ of Livery after the death of the Tenant in Dower.

[259] *THe King to his beloved* T. *of* S. *his Eſcheator in the County of* York. *Greeting. Know that we have taken the Homage and Fealty of our beloved and truſty* R. *Baron of* F. *to us for all the Lands and Tenements which* A. *which was the wife of* R. *of* N. *ſometimes the wife of* R. *lately Baron of* F. *the firſt husband of her* A. *Grandfather of him* R. *now Baron of* F. *of us held in chief the day ſhe died, and to him thoſe Lands and Tenements, with the appurtenances we have rendred. And therefore we command thee, that taking ſurety from the foreſaid* R. *now Baron of* F. *his reaſonable relief to pay us at our Exchequer, the ſame* R. *now Baron of* F. *of all the Lands and Tenements foreſaid with the appurtenances, which the foreſaid* A. *held in Dower after the death of the foreſaid* R. *her husband, grandfather of the foreſaid now Baron of the inheritance foreſaid, in thy Bailiwick the day he died, and which after the death of the foreſaid* A. *were taken into our hand, full ſeiſin thou cauſe to have, ſaving the right of every man. Witneſs, &c.*

And by that it appeareth, That Tenant in Dower who is endowed in the Chancery, &c. of Lands holden of the King *in Capite*, or of other Lands which are in the Kings hands by the death of his Tenant, that ſhe ſhall hold them of her King, and there ſhall have Livery of thoſe Lands after the death; yet it ſeemeth that the Reverſion of thoſe Lands which ſhe holdeth in Dower remaineth not in the King, but in the heir, and if ſhe commit Waſte, the heir ſhall puniſh the Waſte.

There is another form of Writ of Livery, after the death of the Kings Tenant who holdeth parcel in fee, and parcel in tail or for life, thus:

Writ of Livery after the death of Tenant in Tail and Tenant for life.

THe King to his beloved, &c. his Eſcheator in the County of Salop, *and the Marches of* Wales, *to the ſame County adjacent. Greeting. Becauſe we have taken the Homage and Fealty of our beloved and truſty* I. *of* B. *Son and heir*

of I. *of* B. *the elder, of all the Lands and Tenements, with the appurtenances which the ſame* I. *held of us in chief, as well in fee, as for term of life the day he died, and which after the death of the ſaid* I. *the father to the ſaid* I. *the ſon ought to deſcend, or to the ſame* I. *the ſon, and* S. *his wife and to the heirs of their bodies iſſuing, ought to remain, and we have rendred him thoſe Lands and Tenements. Therefore we command thee, that taking ſurety of the foreſaid* I. *his reaſonable relief to pay us at our Exchequer, the ſame* I. *the ſon, of all the Lands foreſaid with the appurtenances, and of which* I. *his father was ſeiſed in his demean as of Fee-tail, the Reverſion of which to the ſaid* I. *the ſon belong in thy Bailiwick, the day he died, and which by the death of the ſame his father, were taken into our hand, full ſeiſin thou cauſe to have ſaving the right of every man. Witneſs, &c.*

And if Tenant in Tail holdeth of the King *in Capite*, and dieth, the heir then of full age, he ſhall have ſuch Writ of Livery.

Writ of Livery for the Heir in Tail.

A *THe King, &c. Know that we have taken the Homage and Fealty of our beloved* W. *&c. ſon and heir of* W. *of* B. *deceaſed, of all the Lands and Tenements which the foreſaid* W. *his father to himſelf, and his heirs of his body iſſuing of the gift, and grant of* W. *of* S. *by Fine thereof in our Court, with our Licence levied, of us in chief the day of his death held, and thoſe Lands and Tenements we have rendred to him; and therefore we command thee that taking ſurety of the foreſaid* W. *&c.*

B And if the Kings Tenant holdeth by Petit Serjeanty, and dieth; and his heir be within age of eighteen years; then he ſhall have a Writ to have Seiſin of the Lands, thus.

Writ of Livery for Lands by Petit Serjeanty.

THe King to his beloved, &c. his Eſcheator in the County of Suffolk. *Greeting. Becauſe we have received by the Inquiſition which we cauſed to be made by thee, that* T. P. *deceaſed, held in his demean as of Fee the day he died, ten Meſſuages,*

Meſſuages, one hundred acres of Meadow, and ten acres of paſture, thirty acres of Moor, and twenty ſhillings of Rent with the appurtenances in W. *in the County foreſaid of us in chief, by the ſervice of twenty ſhillings yearly at the Manor of* L. *to be paid us for all ſervice, and that he held no other Lands or Tenements in his demean as of fee of us, nor of others in the County foreſaid, the day he died; and that* W. *ſon of the foreſaid* T. *is the next heir of the ſame* T. *and of the age of eighteen years and more. We command that taking the fealty of him* W. *according to the form of the Schedule, amongſt the preſents incloſed, and taking ſurety from the ſame* W. *his reaſonable relief to pay us at our Exchequer, the ſame* W. *of the Meſſuage, Land, Meadow, Moor, and Rent, foreſaid with the appurtenances, which by the death of the foreſaid* T. *were taken into our hand, full ſeiſin thou cauſe to have, ſaving the right of every man. Witneſs, &c.*

And thereby it appeareth, that the heir in Soccage ſhall not have *Liverie cum exitibus, &c.* if he paſs the age of fourteen years; but within the age of fourteen years he ſhall have *Liverie cum exitibus, &c.* and the ſame is holden for a difference at this day.

C The Kings Tenant hath iſſue a ſon *D.* of *B.* and two daughters and dieth; and the ſaid *D.* of *B.* hath Livery, and afterwards hath iſſue, a ſon *H.* of *B.* and dieth, the ſaid *H.* being in Ward to the King for his nonage, and afterwards one ſiſter hath iſſue a ſon and dieth, and afterwards *H.* dieth, being in Ward to the King and his Aunt, and the ſon of the other ſiſter being of full age, who ſue to have Livery: Now, they ought for to have a Writ directed to the Eſcheator, by which it ſhall be commanded to the Eſcheator, to make Livery to them, and to make Partition between them of thoſe Lands which are in the Kings hands, ſo as each Coparcener ſhall have part of the Lands which is holden of the King *in Capite*, and the Writ ſhall be ſuch.

Writ of Livery for the Aunt and Neece to make Partition.

THe King to his beloved A. of H his Eſcheator in the County, &c. Greeting. Know that we have taken the Homage and Fealty, as well of D of B. ſon of A of B. one of the ſiſters of D. of B. as of T. of B. another ſiſter of the foreſaid D. of B. couſin and heir of H. of B ſon and heir of the foreſaid D. of B. deceaſed, who of us held in chief for all the Lands and Tenements which the foreſaid D. of B. held in chief, which after the death of the foreſaid D. of B. and by reaſon of the Minority of H. ſon and heir of the ſame D. of B. which H while within age, and in our cuſtody he was deceaſed to our hands became due, and to the ſame D of B. and T. the Lands and Tenements foreſaid, we have rendred: And therefore we command thee, that taking ſurety from the foreſaid D. of B. and T. their reaſonable reliefs to pay us at our Exchequer, and making a legal partition of all the Lands and Tenements, with the appurtenances in thy Bailiwick, which by the death of the foreſaid D. of B. and by reaſon of the Minority of the foreſaid H. to our hands came, and in our hands yet are, according to the extent thereof made, or another again if need be to be made, in two parts equal in the preſence of the foreſaid D. of B. and T. or their Attorneys in this part to be warned, if preſent they will be, and the ſame D. of B. and
[260] T. of their parts, them thereof according to that portion according to Law and Cuſtom of our Realm of England contingent, full ſeiſin thou cauſe to have, ſaving the right of every man, provided always that both the foreſaid D. of B. and T. part of the Lands and Tenements which of us are held in chief, and their purparty ſhall have, and Tenant be, with the appurtenances that, &c. Witneſs, &c.

And if a man and his wife hold a Manor of the King in *Capite* in Tail, and die, and have iſſue, two ſons, and the yonger ſon is found heir by vertue of a Writ of *Diem clauſit extremum*, and of full age, and the King maketh Livery unto him of the Manor, and afterwards by another Office found by Commiſſion, &c. it is found that the elder brother is ſon and heir, &c. then upon the laſt Office found, the King ſhall ſend a *Scire facias* directed to the Sheriff to warn him to ſhew why the Manor ſhall not

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not be reſeiled into the Kings hands, and he to anſwer the profits received in the mean time. And if the Sheriff do return the writ ſerved; and that the party is warned, and doth not appear, then the King ſhall reſeiſe the Lands and ſhall make Livety of that Manor unto the Elder brother, and the writ by which the ſervice ſhall be made, ſhall be ſuch.

Writ of livery, and to make void a Livery made before.

THe King to his beloved, &c. his Eſcheator in the County, &c: whereas we lately having found by the inquiſition of H. of S. our Eſcheator in the County foreſaid at our Command taken, and into our Chancery returned, that I. ſon of H. B. deceaſed, and T. his wife, which the foreſaid I. ſometimes her husband ſurvived, likewiſe deceaſed, held the dayes they dyed, in Fee-tail to them and to their heirs of their bodies iſſuing, the Mannor of L. with the appurtenances in the County aforeſaid of us in chief by Knight ſervice and that T. ſon of the foreſaid I. and T. then was next heir of the ſame I. and T. and of full age, we took the Homage and fealty of him T. to us for the Mannour foreſaid due, and that Mannour with the appurtenances rendred, and that command to be delivered him, as by inſpection of the Rolles of our Chancery fully appeareth, and after ſupplicating us H. B. ſon and heir of the ſame I. and T. that whereas by a certain other later inquiſition by the foreſaid eſcheat by our command taken, and in our Chancery returned it is found; that the foreſaid I. and T. held the dayes they dyed in Fee-tail, to them and to their heirs of their bodies iſſuing, the foreſaid Manor with the appurtenances in chief by Knight ſervice in form foreſaid, and the foreſaid R. ſon of the aforeſaid I. and T. of the age of fourty and ſix years is the elder brother of the ſame T. and next heir of the ſame I. and T. without that. That the foreſaid T. is heir of the ſame I. and T. as by the firſt inquiſition is ſuppoſed, we would the Mannor foreſaid into our hands be reſumed, and command to the ſame H. as elder brother of the foreſaid T. and next heir of the ſame I. and T. to be delivered, and we willing in this part to be done, what is Juſt: command by our writ our Sheriff of the County foreſaid that he

warn the foresaid T. that he be before us in our Chancery in the Octaves of St. Hilary last past, wheresoever it should be, to shew if ought for himself he had, or to say knew, why the Manor foresaid, with the appurtenances, together with the issues thereof by him taken, into our hand be resumed, and the same Manor to H. the elder brother of the same T. son and heir of the same I. and T. to be delivered, and we of the issues foresaid by the foresaid T. so taken to be answered, ought not, and to do further, and receive what our Court shall consider in this part, and the foresaid Sheriff hath returned to us, that he warned the foresaid T. that he should be before us in the Chancery at the day foresaid, wheresoever then it should be, to shew what our Writ foresaid required, at which day the foresaid T. in our Chancery solemnly called, appeared not, wherefore it was considered, that the Manor foresaid, with the appurtenances, together with the Issues thereof by the foresaid T. taken, into our hand should be resumed, and we of the Issues foresaid be answered, and the said Manor to the foresaid H. be delivered, we have taken the homage and fealty of the said H. to us for the Manor foresaid, with the appurtenances due, and that Manor with the appurtenances have rendred him. We command thee, that resuming into our hand the Manor foresaid, with the appurtenances in thy Bailiwick, together with the issues foresaid, and taking surety from the foresaid H. his reasonable relief to pay us at our Exchequer, the same H. of the Manor foresaid with the appurtenances, full seisin without delay thou cause to have, according to the consideration foresaid, saving the right of every man, and saving to us our issues of the Manor foresaid from the time of the death of the foresaid T. so taken. *Witness, &c.*

Writ of Livery and Partition which shall issue out of the Chancery, unto the Escheator upon Partition there made.

THe Writ which shall be directed to the Escheator to B deliver Seisin of Lands unto one Coparcener, or divers, where any of them are within age, and in Ward, is made in several manners. One manner of Writ is, when one Coparcener is of full age, and the other Coparcener is within age, and in the Custody of *P.* to whom the King hath

hath committed the Wardſhip, Then by the aſſent of the Kings committee the partition may be made in the Chancery during the non-age of the heir in ward; and then the Writ directed to the Eſcheator ſhall be ſuch.

The King to his beloved I. *of W. his Eſcheator in the County of* Som. *and* Dorſ. *greeting, Know ye that of the aſſent of* P. *&c. Guardian of T. of M. daughter of A. one of the Siſters of T. of B. deceaſed, who of us held in chief, within age, and in our cuſtody, being couſen and one of the heirs, to whom one purparty, and* G. *ſiſter, and other heir of the foreſaid T. of H. of full age being, to whom the other purparty, as well of the Lands and Tenements which* Margery *which was the wife of T. of* B. *the elder likewiſe deceaſed held in Dower, or otherwiſe for term of her life, of the Inheritance of the foreſaid T. of M. and C. the day ſhe dyed belong, we have aſſigned the Mannors, Lands, and Tenements underwritten, viz. the Mannor of &c. to have for the purparty of her C. to her of all the Mannors, Lands, and Tenements foreſaid according to Law and Cuſtome of our Realm contingent, and to the ſame C. whoſe homage we have taken rendred. And therefore we command thee, that taking ſurety of the foreſaid C. her reaſonable relief to pay us at our Exchequer, to the ſame C. the foreſaid Mannor, &c. with the appurtenances in thy Bailywick thou deliver eſt to have for her purparty aforeſaid, ſaving the Right of every man; &c.* [226]

A And if the Kings Tenant hath iſſue *R. N.* his Son, and *Alice* his daughter, and dyeth, and afterwards *R. N.* hath iſſue a Son *F.* and two daughters *E* and *C.* and afterwards *R. N.* dieth ſeiſed, F. being within age, and afterwards *F.* dieth ſeiſed in Ward to the King within age; and after his death it is found by vertue of an Office by Writ, that *E.* and *C.* are his Siſters and next heirs, and of full age, and afterwards by another Office, it is found by Commiſſion, &c. that M. ſon of the ſaid *Alice*, one of the ſiſters of the ſaid *R. N.* and *J.* another ſiſter of the ſaid *R. N.* father of the ſaid F. was couſen, and next heir to the ſaid F. and of full age, upon which the ſiſters of the ſaid F. came into the Chancery, and had a *ſcire facias* againſt the ſaid M. ſon of the ſaid *Alice*, and the ſaid *J.* &c. to ſhew wherefore they ſhould not have Livery of the Lands as heires, &c. And that writ of *Scire facias* was made retornable the Munday which was the ſecond week of Lent, by which it

appeareth, that the Writs which ſhall be ſued in Chancery, may be retorned there in the vacation time, out of Term; and upon the retorn of that *Scire facias*, The ſaid *M* came and granted that he was not heir, *&c.* whereupon the two daughters *E.* and *C.* had a Writ of Livery directed to the Eſcheator, reciting all the matter, and reciting in the Writ, that the King had reſpited their homage until a certain day, commanding the Eſcheator that he make partition betwixt them, and that he aſsign to each of them part of the Land which is holden of the King *in Capite*; which Writ ſhall be retorned and inrolled in the Chancery; the which Writ is in the *Regiſter*, *f.* 316.

Partition and Livery after the death of Tenant by the Curteſie.

B IF it be found by Office by vertue of a Writ, That *B.* held the Manor of *B.* by the Curteſie of *England*, in the right of *E.* who was his wife, which Manor is holden of *P.* by Knights ſervice; and it be further found by the ſame Office, that *B.* is dead, and *M.* and *A.* are his next couſins and heirs, and one of them is within age, and the other of full age; then he who is of full age ſhall have a Writ of Livery to the Eſcheator, that he take ſecurity for the payment of his Relief, and that he make partition betwixt the two heirs, *viz.* *M.* and *A.* in the preſence of him who is of full age, and in the preſence of the *Prochin amies* of him who is within age, and that he deliver ſeiſin of his part to him who is of full age, and that he retain in the Kings hands the part of the other ſiſter. Which Writ ſhall be retorned, and inrolled in the Chancery, and that Writ appeareth in the Regiſter, *fol* 317.

And the like Writ is in the Regiſter, where the Kings Tenant dieth, one of his daughters within age, and the other of full age, in the ſame *fol.* 317.

Partition and Livery for Lands in Socage.

C IF a man holdeth Lands of *G.* in Socage, as of his Manor of *B.* which *G.* and the Manor is in the Ward of the King for the nonage of *G.* and alſo he holdeth other Lands of other Lords by other ſervices, and dieth, and hath iſſue

iſſue two daughters, whereof one is within age, and the other of full age; they ſhall have Livery out of the Kings hand, *ſc.* the *Prochyn amies* of the heir within age ſhall have *Liverie cum exitibus*, and the other daughter ſhall have *Liverie ſine exitibus*, and a ſpecial Writ ſhall be directed unto the Eſcheator in that caſe, reciting the whole matter, and how that the King hath taken Fealty of her who is of full age, and delivered to her her part, commanding the Eſcheator by the Writ, that he take ſecurity of her of full age for her reliefe, and that he make partition betwixt the daughters of the Socage Land; and that he deliver the part of the yonnger unto her *Prochyn amies* with the iſſues and profits of that part from the death of the Anceſtor, and that he intermeddle not with the Lands holden of the other Lords; which ſee *Regiſter*, *fol.* 318.

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A If the Kings Tenant hath iſſue three daughters, and he giveth part of his Lands unto one of his daughters in Frankmarriage, and one of the other two daughters hath iſſue within age and dieth, and afterwards the Tenant in Frankmarriage dieth his heir of full age, and then the Kings Tenant dieth, and then by Office *virtute hns*, it is found, that the daughter of the Kings Tenant, and the iſſue of the two daughters are heirs to the Kings Tenant, and that the iſſue of one of the daughters is within age, and afterwards by another Office it is found, That the Kings Tenant gave part of his Lands to one of his daughters in Frankmarriage, for which upon that Office found, the other daughter, and the iſſue of the ſecond daughter, who is within age, have a *Scire facias* againſt the iſſue of the daughter who was advanced in Frankmarriage, to ſhew at a certain day in the Chancery, wherefore the Lands of which the Kings Tenant died ſeiſed, *&c.* ſhould not be delivered to them as heirs onely unto the Kings Tenant; and if the iſſue of her who was advanced in Frankmarriage, be warned by the *Scire facias*, and ſo returned warned by the Sheriff, maketh default, or cannot ſhew matter ſufficient to maintain her Title, then thereupon a Writ of Livery ſhall be awarded to the Eſcheator, rehearſing how that the King hath taken homage and fealty of the eldeſt daughter, and that he hath rendred to her her part, commanding the Eſcheator, that he take ſecurity of the eldeſt ſiſter to pay her Relief into the Exchequer, and that he make partition

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on in two equal parts in the preſence of the parties, if they will come, and that he deliver ſeiſin to the ſiſter of full age of her part, and that he retain the other part in the Kings hands for the non-age of the Daughter the other ſiſter. See the writ thereof in the Regiſter, 320.

If A. holdeth a parcel of Lands in ſocage of B. which B. is in Ward to the King, and alſo the ſaid A. holdeth another parcel of lands of C. in ſocage, who is alſo in ward to the King for non-age, and alſo the ſaid A. holdeth other lands of ſeveral other Lords by other Services, and afterwards the ſaid A. hath iſſue ſeven daughters, and afterwards one of the daughters hath iſſue within age and dyeth, and then A. dyeth, and all that matter be found by Office, Then upon that Office returned, they ſhall have a Writ to the Eſcheator, commanding him that he take fealty of the ſix daughters for their parts, and for their Reliefs to be paid in the Exchequer, and that he make partition of all the Lands into ſeven parts in the preſence of the parties, if they will be there; and that he deliver full ſeiſin to the ſix ſiſters of their parts, and that he keep in the kings hands the part of her who is within age, until the King otherwiſe command him, and that he deliver the Lands and Tenements which are holden of the other Lords, which are aſſigned for the part of her within age, unto the *prochin Amye* of the infant to whom the Inheritance cannot diſcend, and that he deliver the iſſues and profits of the lands holden of other Lords, then of thoſe Lords who are in the Cuſtody of the King which of Right they ought to have: And after that this Writ is awarded to the Eſcheator, If the Eſcheator be removed after that he hath made the partition according to the writ, and before the return of the writ Then the Siſters may ſue forth a new writ to the new Eſcheator, reciting the whole matter, and how the Eſcheator was removed before he had executed the command unto him, commanding the new Eſcheator, That if the partition be not made, That he do all ſuch things as the other Eſcheator ought to have done, and retain in the Kings hands, &c. B

And then if the new Eſcheator upon that new writ return unto the King in Chancery, that by vertue of the ſaid Writ he hath made partition of ſeven parts of thoſe lands, and that he hath retained in the Kings hands the part

part of her who is within age, and that he hath unto three of the other three ſiſters their parts, and that the other three ſiſters did not come to take their parts, ſo that they remain in the Kings hands, upon ſuch Retorn the ſaid three ſiſters may come into the Chancery, and pray to have a Writ unto the Eſcheator, with the Tranſcript of the Partition to be incloſed therein, commanding him to take ſecurity of them for their Reliefs, *&c.* and that he deliver to them their parts appertaining unto them according to the Partition made, retaining in the Kings hands, the part of her who is within age, until he hath command to the contrary, and that he return the Writ, and what he hath done upon the ſame under his ſeal, fully and openly without delay. See the Writ thereof in the *Regiſter*, 319.

C And it appeareth by the Regiſter, That if the Kings Tenant hath iſſue two daughters, and one be within age, and the other of full age and dieth, that ſhe who is of full age may ſue unto the King to have the Cuſtody of her ſiſters part, during her nonage, and to ſue Livery of the other moyety; and thereupon ſhe ſhall have a ſpecial Writ unto the Eſcheator, rehearſing how the King hath taken her Homage, and hath aſſigned unto her the moyety of the Lands, *&c.* which appertained unto her for her part, and that he hath committed the Cuſtody of the other part unto her, during the nonage of the heir, the other Coparcenor, commanding the Eſcheator by the Writ, that he take ſecurity of her to pay her Relief into the Exchequer, and that he deliver ſeiſin of the moyety unto the heir of full age, until the full age of the other Coparcenor within age, with the iſſues and profits of the other moyety from the death of the Anceſtor, and thereby it appeareth, That [263] when the other Coparcenor within age cometh of full age, they both ſhall ſue forth a new Livery joyntly. See the *Regiſter*, *fol.* 320.

A And it appeareth by the Regiſter, That if a man hath Lands in *London* in Fee, and hath iſſue two daughters, and leaſeth the Lands for life and dieth, and afterwards the Tenant for life dieth, the daughters of full age, and all the ſame be found by Office: The two daughters ſhall ſue forth a Writ of Livery for thoſe Lands, becauſe they are holden of the King in Burgage, and the Writ ſhall be directed to the Eſcheator, commanding him to make partition

tion of thoſe Lands betwixt the Daughters. And if one daughter be indebted to the King, Then by the ſame writ he ſhall command the Eſcheator, that he retain the part of her who is indebted in the Kings hands, until he hath other command, and that he deliver the other part unto the other daughter, reciting in the ſame writ that he hath taken Homage and Fealty of the other Daughter; And moreover by the ſame writ, the Eſcheator ſhall be commanded, that he take ſecurity of the other daughter for the Relief of that Coparcener if any be due, &c. and that he return the whole matter into the Chancery under his Seal, &c.

And if the Kings Tenant who holdeth of him in *Capite* B
in Fee dyeth, and hath iſſue three daughters his heirs of full age, and another woman who holdeth in Dower other lands for term of her life of the aſſignment of her husband, which lands are alſo holden of the King in capite, dyeth, and the reverſion of thoſe lands are the Inheritance of the ſaid daughters, they ſhall have one writ of *Livery* unto the Eſcheator for all thoſe lands, reciting the whole matter, and how that he hath taken their Homage and Fealty, or that he hath reſpited the ſame till a certain day, &c. And that he render to them their parts, commanding the Eſcheator that he take ſecurity of them for to pay their reliefs, *&c.* and that he make equal Partition betwixt them in their preſence, if they will appear, and that he give full ſeiſin to each of them of their parts with ſuch a proviſion that each of them ſhall have part of that rent which is ſo holden of the King in *capite* for her part; ſo that each of them be Tenant to the King, &c. And it appeareth by that writ That a rent be holden of the King by knights ſervice in *capite*, as well as lands. See the Regiſter, fol. 318.

Writ de Dote aſſignanda.

THe writ of *dote aſſignanda* lieth where it is found by C
Office, That the Kings Tenant was ſeiſed of Tenements in Fee or in fee-tail, the day he died, &c. and held of the King in *Capite*; Then the wife may and ought to come into the Chancery and there make oath, that ſhe will not marry without the Kings Licenſe; and thereupon the King may aſſign her Dower in the Chancery of thoſe Manors

nors and Lands, and thereupon ſhe ſhall have a Writ unto the Eſcheator where the Lands are, which ſhall be ſuch.

The King to his Eſcheator in the County of B. *Greeting. Know that of the* Lands *and Tenements of* N. *deceaſed, who of us held in chief, and which by occaſion of the death of the ſame* N. *are taken into our hand, we have aſſigned to* I. *which was the wife of the foreſaid* N. *the third part of the Manors of* T. *and* C. *in the County of* T. *with the appurtenances; as alſo the eleventh part of the purparty which was his* N. *of the Court of the Liberty of the Honor of* Wincheſter, *and View of Frankpledge in the ſame County, to have for her Dower to her, of the Manors and purparty foreſaid, according to Law and Cuſtom of our Realm contingent; as alſo of the aſſent of* Edward, *Prince of* Wales, *our moſt dear ſon to whom the cuſtody of the Manor of* R. *in the County of* Bucks, *which to fifty pound, and of the Manor of* N. *with the appurtenances in the ſaid County of* B. *which to ten pound are extended by the year, as by the extents thereof by our command made, and into our Chancery returned is found, we have aſſigned to the foreſaid* I. *the ſaid Manor of* N. *with the appurtenances for her Dower of the ſaid Manors of* R. *and* N. *to have in the form foreſaid; and therefore we command thee, that to the ſame* I. *the ſaid Manor of* N. *with the appurtenances, thou deliver eſt to have for her Dower, as foreſaid is. Witneſs, &c.*

D And when the wife hath made her oath in the Chancery, ſhe may have a Writ of *Dote aſſignanda* to the Eſcheator, to aſſign her Dower; and the Writ ſhall recite, that ſhe hath made her oath in the Chancery, *&c.* But the uſe is to make the Aſſignment of the Dower in the Chancery, & to award a Writ unto the Eſcheator, to deliver the Lands aſſigned unto her; and although the King doth commit the Cuſtody of the Land unto another, yet, the King may aſsign Dower unto the wife in Chancery, and ſhe ſhall have a Writ unto the Eſcheator, to deliver unto her that Dower, as appeareth by the Regiſter; and the Writ ſhall be ſuch.

The King to his Eſcheator, &c. Greeting. Whereas amongſt other Lands *and Tenements of* I. *which was the wife of* N. *deceaſed, who of us held in chief, by us of the* Lands *and Tenements of the foreſaid* N. *which were for Dower aſsigned; we have aſsigned part of the Manor of* Groby, *with the appurtenances in the County foreſaid, as alſo the third part of the purparty which was his* N. *of the Court of the* Liberty *of the Honor of* W. *and view of Frankpledge in the ſame County to have for Dower, in the form foreſaid,*

foreſaid. We command thee, that to the ſame I. *whoſe oath not to marry her ſelf without our Licence we have taken, the ſaid third part in thy Baliwick, in preſence of the ſame Gardian of the Manors, and third part, by you therefore to be warned, if preſent he will be, or of his Attorney, in part to be aſſigned, and delivered thou cauſe, to have for Dower, as foreſaid is, and when that aſſignment, &c. Witneſs, &c.*

And if the wife after the death of the husband, doth come into the Chancery, and prayeth her Dower there, the King
[264] may grant a Writ unto the Eſcheator, commanding him to take ſecurity of the wife, that ſhe do not marry her ſelf, and that the Eſcheator do aſſign Dower unto her, and the Writ ſhall be ſuch.

The King to his Eſcheator, &c. We command thee, that taking the oath of M. *which was the wife of* W. *deceaſed, not to marry her ſelf without our Licence, to the ſame* M. *her reaſonable Dower, to her of all the Lands, and Tenements which the foreſaid* W. *ſometime her husband held in his demean as of fee, in thy Bailiwick the day he died, and which after the death of the foreſaid* W. *were taken into our hand, and ſo are, according to the Law and Cuſtom of our Realm of* England *contingent, by extent thereof made, or other if neceſſary it ſhall be again to be made in the preſence of* B. *by thee therefore to be warned, if preſent he will be to be aſſigned thou cauſe, and when that aſſignment ſo thou haſt made, it under thy ſeal diſtinctly and openly ſend thou, that it in the Rolls of our Chancery, as the manner is, we may cauſe to be inrolled. Witneſs, &c.*

And if a man dieth ſeiſed of Lands which are holden by A
Knights ſervice of any Manor, or otherwiſe, as of any Abbey, Biſhoprick or Priory, or ſuch which are in the Kings hands by reaſon of vacancy of the Abbey or Biſhoprick, *&c.* then if the wife will have Dower, ſhe ought to ſue in the Chancery to have ſuch Writ directed unto the Eſcheator, to aſſign her Dower, but there the wife ſhall not take Oath, that ſhe ſhall not marry without the Kings Licence, as appeareth by the Writ; which is ſuch.

The King, &c. we command thee, that A. *which was the wife of* B. *deceaſed, who of the Abbey of* Peterborough, *lately vacant, and in our hand being held by Knights ſervice, her reaſonable dower of all the Lands and Tenements, &c. which the foreſaid* B. *her husband held of the Abbey foreſaid in thy Baliwick the day he died, and which after the death of him* B. *in our hand are, &c.* as above.

And

And the like Writ may be ſued by the wife for Lands which her husband held by Knights ſervice of the Manor of him who is in ward to the King by reaſon of his nonage; but there ſhe ſhall not make oath that ſhe will not make oath that ſhe will not marry her ſelf no more then in the caſe before.

B And the King may aſſign Lands in Dower in the Chancery, rendring rent yearly to the King, *&c.* becauſe the Lands do exceed the very value of the third part of all the Tenements, whereof ſhe ought to have Dower; and then upon that aſſignment made in Chancery, ſhe ſhall have and ſue ſuch Writ to the Eſcheator.

The King to his Eſcheator, &c. Know ye that of the Lands, and Tenements of E. *of* B. *deceaſed, which were, who of us held in chief; and which by occaſion of the death of the ſame* E. *are taken into our hand, we have aſſigned to* M. *which was the wife of the foreſaid* E. *the Manors underwrit,* viz. *of* B. *and* C. *&c. with the appurtenances in the County of* T. *which to one hundred pounds yearly are extended, to have for her Dower to her of the Lands and Tenements foreſaid according to the Law and Cuſtom of our Realm of* England *Conting. rendring thereof to us yearly at our Exchequer, ſo much as exceedeth the Dower foreſaid; and therefore we command thee that to the ſame* M. *the ſaid Manors, with the appurtenances thou deliver, to have for her Dower in form foreſaid. Witneſs, &c.*

And if the wife be impotent, ſo as ſhe cannot come into the Chancery to make oath, and to demand her Dower, then ſhe may ſue a ſpecial Writ directed to certain perſons to take her oath, and to receive Attorney for the wife to ſue for her Dower in the Chancery, *&c.* and the Writ appeareth in the *Regiſter, fol.* 298.

C And if the King make Livery unto the heir at his full age ſaving unto the wife her Dower to be aſſigned by the King, then if the wife will demand Dower, ſhe ought for to ſue for the ſame in the Chancery, and if ſhe do demand her Dower there, then ſhall iſſue a ſpecial Writ unto the Eſcheator, that he warn the heir for to be in Chancery at a certain day, *&c.* and there the wife ſhall have the ſame day to receive her Dower, *&c.* and the Writ which ſhall

D iſſue againſt the heir ſhall be ſuch.

The King to his Eſcheator, &c. Whereas the L. Edward *King*

of

of England, *our Father, the twentieth day of* January *laſt paſt, took the homage of* T. *of* B. *ſon and heir of* T. *of* B *deceaſed, of all the Lands and Tenements which the ſame* T. *his father held of the ſaid our father the day he died, &c. and thoſe Lands and Tenements rendred and commanded them to be delivered him, ſaving the right of every man, and ſaving to* M. *which was the wife of the foreſaid,* T. *her reaſonable Dower to her of her Lands and Tenements foreſaid according to the Law and Cuſtom of our Realm of* England *contingent to her as the manner is to be aſſigned, as by inſpection of the Rolls of the Chancery of our ſaid father appeareth to us, and the foreſaid* M. *us hath ſupplicated, that to her, her Dower, to her of the Lands and Tenements foreſaid Contingent, according to the Law and Cuſtom of our Realm of* England *we would cauſe to be aſſigned, whereof day we have given to the foreſaid* M. *that he be in our Chancery, on the morrow of* All-Souls, *&c. whereſoever, &c. to receive her Dower foreſaid. We command thee that thou warn the foreſaid* T. *that at the day foreſaid he be preſent at the aſſign of the foreſaid, if it ſeem to him expedient, and have there the names, &c. and this Writ. Witneſs, &c.*

But if the King maketh Livery unto the heir by his Writ directed to the Eſcheator, by which Writ he commandeth his Eſcheator to deliver unto him ſeiſin of all his Lands, *&c. ſaving the right of every man,* and he putteth not in the Writ the words, *ſaving* M. *which was the wife, &c. her reaſonable Dower, to her of the Lands and Tenements, &c. contingent to her by us to be aſsign.* then in that caſe the wife ought to ſue her Writ of Dower againſt the heir if ſhe will demand Dower of thoſe Lands, becauſe the King made Livery generally of thoſe Lands by his Writ, without any reſervation of Dower to be aſſigned by him, *&c.*

And if the King make a reſervation of Dower to be aſſigned by him by his Writ of Livery which is directed to Eſcheator, if the wife never demand dower, or if ſhe hath Dower aſſigned unto her by the King in Chancery, yet after the aſſignment made by the King, the reverſion thereof is in the heir, and he ſhall not ſue Livery of that reverſion after the death of the Tenant in Dower, becauſe the Writ of Livery doth not reſerve any thing to the King but aſsignment of Dower to the wife, but the Writ doth command the Eſcheator to deliver ſeiſin of all the Land, A

and

that the Eſcheator doth, and by that *Livery* of all the Land paſſed from the King, and therefore it followeth, that when the wife is aſſigned her Dower by the King in Chancery, that yet the Reverſion doth remain in the Heir, *&c.* for which he ſhall not ſue a new *Livery* of that Reverſion after the death of the Tenant in Dower, *&c. tamen Quære* of that caſe.

B And if the wife be aſſigned Dower in the Chancery, and afterward it is ſurmiſed by the heir, or by another for the King, that the Land aſſigned to the wife, is not extended to the very value, but that the Land aſſigned to her is much more in value then it is extended at, and that the Lands which remain in the Kings hands, are extended to the very value, *&c.* Then the King ſhall ſend a Writ to the Eſcheator to make a new Extent; and upon that Writ returned, if it be found, that the Land aſſigned to the wife, is of greater value, *&c.* then upon return thereof, a *Scire facias* ſhall be awarded againſt the wife, to ſhew cauſe wherefore ſhe ſhall not be new endowed, *&c.* And if ſhe be warned, and maketh default, it ſeemeth ſhe ſhall be new endowed for her default; or if ſhe appear, and cannot ſay any thing contrary to that new Extent, ſhe ſhall be endowed anew, ſo as part of the Land aſſigned to her ſhall be taken from her at the Kings pleaſure; or the King make a new Aſſignment of all that ſhe had in Dower if he pleaſeth, and a new Writ ſhall be to the Sheriff, to deliver her Seiſin thereof, ſo newly aſſigned to her, *Quære* the uſe of this point.

If the Land aſſigned to the wife be evicted, ſhe ſhall have a *Scire facias*, to reſeiſe the Land, and ſhall be new endowed, 43 *Aſſ.* 32. *Br. Dower*, 65.

C And if the wife make Oath, that ſhe will not marry her ſelf without the Kings Licence, and is endowed upon the ſame, *&c.* and afterwards ſhe marrieth without Licence, *&c.* then the King ſhall ſend a Writ to the Eſcheator that he reſeiſe all the Lands which ſhe holdeth in Dower, as appeareth by the Regiſter, and not all the other Lands which ſhe or her husband had in their own right; and the Writ is ſuch.

The K. to his Eſcheat. &c. Whereas A. which was the wife of P. of B. deceaſed, who of us held in chief, which lately took her Corporal Oath, not to marry her ſelf without our Licence; now her ſelf to W. of P. hath married, our Licence herupon not obtained, as we have received, we ſuch contempt not willing to paſs unpuniſhed, as alſo willing to look after our

indemnity in this part. We command thee, that if so it be, then all the Lands and Tenements which the foresaid W. *and* A. *hold for Dower of her* A. *of the inheritance of the foresaid* I. *in thy Bailiwick without delay thou take into our hand. So that of the issues thence coming, thou answer us at our Exchequer, until we shall be satisfied for the forfeiture thereupon belonging, or we think fit to appoint otherwise. Witness, &c.*

Writ de Levari facias.

THe Writ of *Levari facias*, is a Writ which shall issue D
out of the Record, and shall issue sometimes out of the Chancery, and sometimes out of other Courts where the Record is; as if a man be bounden in a Recognisance in the Chancery in twenty pound, to be paid at the Feast of St. *Michael* next following, then if he do not pay the money at the day, a *Levari facias* shall be directed to the Sheriff, that he levy the sum of his Goods and Chattels; and the form of the Writ is such.

The K. to the Sheriff, &c. Because I. *the son of* B. *ought to* E
have paid M. *of* B. *twenty pound at the Feast of St.* Michael, *the &c. year of our reign, &c. as it appeareth to us by inspection of the Rolls of our Chancery, and those hath not yet paid him, as is said. We command thee that the foresaid money of the Lands, and Chattels of him* I. *in thy Bailiwick, without delay thou cause to be levied, so that thou maist have in our Chancery, the Morrow of the Nativity of St.* John Baptist *next to come, wheresoever then it shall be, to the foresaid* M. *there to be delivered; and this in no wise omit, and have there this Writ, &c.*

And he may have an *Alias & pluries, vel causam nobis* F
significes, directed to the Sheriff; and if he will not return the Writ, he shall have an Attachment against the Sheriff. And this Writ is given by the Common Law before the G
Statute of *West.* 2. which gave the Writ of *Elegit*. But this Writ ought to be sued within the year after the day of payment to be made by the Recognisance; for after the year and day payment to be made, if he do not sue forth this Writ, then he ought to have a Writ of Debt before the Statute of *West.* 2. which gave the *Scire facias* against him who was so bounden by Recognisance; but now by that Statute he shall have the Writ of *Scire facias*

to

to make him come at a certain day into the Chancery, to ſhew what he can ſay, why he ought not for to pay the ſum, &c. And if the Sheriff upon the *Levari facias* return that he hath levied ten pound of the ſum, &c. which he hath delivered to the party, &c. then upon that return, he who ought for to have the money, may ſue forth a *Sicut alias*, *Levari facias*, directed to the Sheriff for to keep the Reſidue of the ſum, which Writ ſhall be ſuch.

The King to the Sheriff, &c. Becauſe T. *Abbot of* B. *ought to have paid to* R. *one hundred pounds, &c. at the Feaſt, &c. the year, &c. it appeareth, &c. and them, &c. Wherefore we command thee, that the foreſaid money of the Lands, and Chattels of him the Abbot in thy Bailiwick, without delay thou cauſe to be levied; ſo that if thou maiſt have in the Chancery, &c. wherſoever, &c. to the foreſaid* R. *there to be delivered, and thou haſt returned to us, that thou haſt taken into our hands at divers times of the Goods and Chattels of him the Abbot, to the value, &c. which thereof thou haſt levied, and the foreſaid* B. *haſt cauſed to have. We command thee that the reſidue of the debt foreſaid of the Lands and Chattels of him the Abbot in thy Bailiwick, without delay, cauſe to be levied; ſo that thou mayeſt have before us from the day, &c. whereſoever, &c. to the foreſaid* B. *there to be delivered; and this in no wiſe omit, &c. Witneſs, &c.*

A And if a Parſon be bounden in a Recogniſance in Chancery, in two hundred pound, to pay at a certain day, &c. and he doth not pay the ſame at the day, then the Recogniſee ſhall have a *Levari facias* directed to the Biſhop, or a *Levari facias* directed to divers Biſhops to levy the money of Spiritual Goods, and the Writ ſhall be ſuch. 12 H. 4. 24. 13 H. 4. 17.

The King to the venerable Father in Chriſt, R. *&c. Greeting. Becauſe* I. *Parſon of the Church of* S. *of the County of* H. *of your Dioceſs, and* T. *of* L. *Parſon of the Church of* M. *of the County of* B. *of the Dioceſs of* Lincoln, *ought to have paid Maſter* F. *two hundred pounds at the Feaſt of* All-Saints, *&c. year, &c. as it appeareth, &c. as he ſaith. We command you that one hundred and twenty marks of the ſum foreſaid of the Goods and Chattels of him* I. *in the ſaid Dioceſan, without delay, you cauſe to be levied; ſo that the ſame hundred and twenty marks, we may have in our Chancery whereſoever, &c. to the foreſaid* F. *there to be delivered,*

and this in no wiſe omit ye, and have there this Writ: For we have commanded W. *Biſhop of* Lincoln, *that he one hundred and twenty marks, &c. reſidue of the goods Eccleſiaſtick of him* T. *in his ſaid Dioceſs to be levied, ſhould cauſe in the form foreſaid. Witneſs, &c.*

But if the Parſon hath Lands of his own purchaſe, he may have a Writ to the Sheriff to levy the ſame, *&c.* But now by the Statute of *Weſt.* 2. *cap.* 18. he may ſue forth an Elegit upon the Recogniſance made in the Chancery, directed to the Sheriff, to have Execution of the moyety of his Lands, and of all his goods and chattels, except his leaſts of the plough, and to deliver them to the heir for his maintenance, and the form of the Writ is ſuch. B

The King to the Sheriff, &c. Becauſe R. *the eleventh day of* February *laſt paſt in our Chancery acknowledged himſelf to ow to* N. *twenty pounds, which he ought to have paid him at the Feaſt, &c. then next following, as it appeareth, &c. of our Chancery, and thoſe to him hath not yet paid, as he ſaith, and the ſame* N. *according to the Statute thereupon ſet forth, hath choſen to be delivered him for the foreſaid twenty pounds, all his chattels and the moyety of the Land of him* R. *to be held according to the form of the Statute foreſaid. We command thee that the chattels of him* R. *to the value of the foreſaid twenty pounds, by reaſonable appriſing of the ſame, except his Oxen and draught Beaſts, in the preſence of the foreſaid* R. *by thee thereof to be warned, if preſent, he will be to be made, to the foreſaid* N. *or his certain Attorney cauſe to be delivered; and if thoſe chattels, to the value of the foreſaid twenty pounds, ſuffice not, then thoſe chattels ſo leſs of value, by reaſonable appriſing, and alſo the moyety of the Land of him* R. *in thy Bailiwick by extent likewiſe in thy preſence, in form foreſaid to be made to the foreſaid* N. *or his ſaid Attorney, cauſe to be delivered to be held as his Frank-tenement, until the ſaid debt thence ſhall be levied, and what thou ſhalt do thereupon to us in our Chancery, whereſoever it ſhall be under thy Seal, diſtinctly and openly make known, and have there this Writ. Witneſs, &c.*

And after the year and the day of payment paſſed of the Recogniſance, the Recogniſee ought for to ſue a *Scire facias* againſt the Recogniſor, to ſhew what he can ſay, why the Recogniſee ſhould not have execution; and if he be C

returned

returned upon that Writ warned by the Sheriff, if he do not appear, or if he do appear and cannot ſay any thing wherefore he ſhould not have Execution; then the Recogniſee may ſue forth the Writ of *Elegit*, to have Execution of all his goods, and of the moyety of his Lands; and if the Sheriff return the *Elegit*, that the Recogniſor hath made a Feoffment in Fee of part of the Lands to divers Tenants, *&c.* And that he hath enfeoffed the King of the reſidue, then upon that return, the Lands whereof the King is ſeiſed, by that Feoffment are diſcharged. But he may ſue a *Scire facias* to warn the other Tenants, to appear at a certain day to ſhew cauſe wherefore the ſaid Lands ſhall not be delivered in Execution; and if they be warned, and do not appear, or if they come, and cannot ſay any thing, *&c* to bar the Execution, then the Recogniſee ſhall have Execution againſt them of thoſe Lands by Writ of *Elegit*, *&c.* But he ſhall have the *Elegit* before that he ſueth the *Scire facias* againſt thoſe Tenants.

D And if a man bounden by Recogniſance in the Chancery, and the Recogniſor hath certain Indentures of Defeaſanee, then if the Recogniſee will ſue Execution upon the Recogniſance, the Recogniſor may come into the Chancery, and ſhew the Indentures of Defeaſance, and that he is ready to perform them; and thereupon he ſhall have a *Scire facias* againſt the Recogniſee returnable at a certain day in the Chancery; and in the ſame Writ he ſhall have a *Superſedeas* directed to the Sheriff, that in the mean time he do not Execution by vertue of the Writ ſued forth by the Recogniſee. And if the Sheriff upon any ſuch Writ return, that he hath ſent to the Bailiff of the Liberty to do Execution, which Bailiff hath returned him no anſwer, then upon that return he ſhall have a new Writ directed to the Sheriff with a *Non omittas* therein, That he enter the Franchiſe and do Execution, *&c.*

A And a man may ſue Execution by *Scire facias* upon a Recogniſance made in the time of another King in the Chancery, or in the Common Pleas, or in the Court of Record. And the King may by his Commiſſion give authority to one, to receive a Recogniſance of another man,

and to return the ſame into the Chancery. And by vertue of that Commiſſion, a man doth before the Commiſſioners acknowledge a debt to be paid to another at a certain day, *&c.* and certifie the ſame into the Chancery, with the Commiſſion, *&c.* then upon the Certificate thereof, if he do not pay the debt at the day, he ſhall have an *Elegit* upon the Conuſance ſo taken, as well as if it were taken in the Chancery, and the form of the Commiſſion is ſuch.

The King to his beloved and truſty R. of M. *Greeting. Know ye that we have given you power to receive the Recogniſance which* I. of P. *before you will make of a certain ſum of money; and therefore we command you that when that Recogniſance you have taken, us thereof, and of the day, or days of payment; as alſo of the day of taking of the ſame, in our Chancery, under the Seal diſtinctly and openly you certifie, this Writ ſending us back. Witneſs. &c.*

And there is another form thus.

The King, &c. Know ye, that we have given you power to receive this time in our name, the Recogniſance which I. of T. *of what debt ſoever will make, and therefore we command you, that when that Recogniſance you have taken us thereof under your Seal diſtinctly, &c.*

And by that Commiſſion he hath general Authority to take Recogniſance of any man who will acknowledge any debt before him, to any perſon whatſoever, *&c.*

See before 130. *H.* So note that *Capias ad ſatisfaciend*, lieth not upon a Recogniſance. 34 *H.* 6. 45. 48 *Ed.* 3. 14 *V.* 38 *Ed.* 3. 12. *Br. Execution* 42.

If a man be bounden in Recogniſance in one hundred pound, to pay five ſeveral days twenty pound, then immediately after the firſt day of payment is paſt, he may ſue for *Elegit* for twenty pound, and at the ſecond day he may ſue an other *Elegit*, or *Levari facias* of other twenty pound, and ſo of all the twenty pounds, every day of payment, and he ſhall have ſuch Writ of *Elegit* for the payment that ſhall be made at that day, and ſhall not ſtay his ſuit, till all the days of payments are paſt. B

And if two be bound in Recogniſance in Chancery, *viz.* *Qutlibet eorum in ſolid. recogn. ſe debere, &c.* he may ſue ſeveral *Scire facias* againſt them to have the money levied of their Goods and Lands, *&c.* C

If a man be bound in a Recogniſance in Chancery or other

other Court of Record, and afterwards the Recogniſee dieth, his Executors may ſue forth *Elegit* to have Execution of the Lands of the Recogniſor. And if the Sheriff return that the Recogniſor is dead, then the Executors ſhall ſue a ſpecial *Scire facias* againſt the heir of the Recogniſor, and againſt thoſe who are Tenants of the Lands which he had at the day of the Recogniſance made, and that Writ of *Scire facias* ſhall recite and ſhew that the Executors who ſue the Writ, have elected to have the moyety of the Lands which the Recogniſee had at the making of the Recogniſance, and the form of the Writ is.

The King to the Sheriff, &c. Whereas I. *of* W. *ſuch day and year, &c. in our Chancery recogniſed himſelf to owe to* N. *lately Duke of* Lancaſter, *one hundred pounds which he ought to have paid him at the Feaſt, &c. then next to come, as it appeareth, &c. And thoſe to him hath not yet paid, as is ſaid, and* W. B. *and* C. *Executors of the foreſaid lately Duke deceaſed, according to the Statute thereupon ſet forth, have choſen to be delivered to them for the foreſaid one hundred pounds, all the Chattels, and moyety of the Land of him* I. W. *to be held according to the form of the Statute foreſaid. Wherefore we command thee, That thou ſhouldſt warn the foreſaid* I. *of* W. *that he ſhould be before us in our Chancery ſuch day next to come, whereſoever, &c. to ſhow, if ought for him he had or knew, to ſay, why all his Chattels, and the moyety of his Land foreſaid to the Executors for the foreſaid one hundred pounds, ought not to be delivered according to form of the Statute foreſaid, and thou haſt returned to us, that the foreſaid* I. *of* W. *is dead. We command thee that thou warn the Heirs of him* I. *of* W. *as alſo the Tenants of the Land of the ſame* I. *of* W. *which was the day of the Recogniſance foreſaid, that they be in our Chancery, &c. next to come, whereſoever, to ſhow, if ought, for themſelves they may have, or to ſay, know, why the moyety which they hold of the Land foreſaid, to the foreſaid Executors for the foreſaid hundred pound ought not to be delivered, according to the form of the Statute foreſaid, and have thou there the names of them by whom, &c. Witneſs, &c.*

And thereby appeareth, That if a man be bounden in a Recogniſance, *&c.* although that the Recogniſee dieth, yet his Executors cannot ſue forth an *Elegit* to have execution of the Recogniſance which the year after the day of payment without ſuing forth a *Scire facias* againſt the Recogniſor,

14 *H.*7.16.
15 *H.*7.16.

cogniſor, &c. But againſt the heir of the Recogniſor, or the Terre Tenants, the Recogniſee, or his Executors ought to ſue forth a *Scire facias*, &c. otherwiſe if they be ouſted, &c. By ſuch Execution of their Lands, they ſhall have an Aſſiſe of *Novel diſſeiſin*, &c.

Writ de Idemptitate nominis.

THe Writ of *Idemptitate nominis* lieth where a man is ſued in a perſonal Action, and upon the *Capias* or *Exigent* awarded another man, who beareth the ſame name is arreſted by force of the Writ, then he who is ſo arreſted, ſhall ſue forth this Writ of *Idemptitate nominis*, and this Writ ſhall be directed ſometimes to the Eſcheator, if he or his Goods be arreſted by him, or unto the Sheriff, if they are vexed or moleſted by him; and the form of the Writ is ſuch. E

The King to his beloved J. *of* S. *his Eſcheator in the County of* Lincoln, *Greeting. Whereas lately as we have received* J. *of* N. *Taverner, now deceaſed, as is ſaid, becauſe he came not before our Juſtices of the Bench, to anſwer* R. *for ſometime he was receiver of the pence of him* R. *in the exigent put, was in our huſting of* London *to be out-lawed, and on that occaſion Munday next after the Feaſt of St.* Peter *in the Chair, the tenth year of our Reign outlawed; and now of the part of* I. *of* R. *of* London, *Baker, we have underſtood, that although he be not the ſame* I. *of* R. *who at the ſute of him* R. *outlawed was, nor any Goods or Chattels, of the ſame outlaws which were, to his hands came, yet thou for the identity of ſuch name, and ſirname of* R. *pretending him* I. *of* R. *of* London, *Baker, to be the ſame* I. *of* R. *of* London, *Taverner, who ſo outlawed was, the Goods and Chattels of the ſame* I. *of* R. *of* London, *Baker, by colour of a certain our Writ, the Goods and Chattels, which the foreſaid* I. *of* R. *of* London, *Taverner, had in thy Bailiwick the day of the publiſhing the outlaries foreſaid into our hand to take, into our hand intendeſt to ſeiſe, and him on that occaſion many ways diſquieteſt leſs juſtly, to the no ſmall damage and grievance of* I. *of* R. *of* London, *Baker, whereupon he hath ſupplicated us to be provided by us of a remedy, and becauſe him* I. *of* R. *of* London, *Baker, we will not unduly to be grieved; we command thee, that if by inquiſition*

or

or any other lawful manner, it may appear to thee, the foreſaid I. *of* R. *of* London, *Baker, not to be the foreſaid* I. *of* R. *of* London, *Taverner, who ſo outlawed was, nor any of the Goods and Chattels of the ſame outlaw which were, the day of the publiſhing the outlary foreſaid to his hands to have come, as is ſaid, then the taking of the Goods and Chattels of the ſame* I. *of* R. *of* London, *Baker, by occaſion of the outlary foreſaid into our hand ſurceaſe altogether. Provided always, that of all the Goods and Chattels which the foreſaid* I. *of* R. *of* London, *Taverner, had in thy Bailiwick the day of the publiſhing the outlary foreſaid, if any there be, thou anſwer us as is juſt. Witneſs, &c.*

Accompt againſt the Terre Tenant. V. 5 *Eliz. Dyer* 225.

A And ſo if a man be diſtreined by Proces out of the Exchequer for to accompt, *&c.* for another perſon who hath the ſame name which he hath, that he ſhall ſue that Writ to the Barons of the Exchequer, and to the Treaſurer, and the Writ ſhall be thus.

The King to his Treaſurer and Barons of his Exchequer, Greeting. I. *Clerk of* N. *hath ſhown unto us, that whereas a certain* I. *Clerk, to render us a certain account of the iſſues of the paſſage of* Green *Caſtle, the day he died was held, which* I. *Clerk dead is, and was called while he lived,* I. *Clerk of* A. *as is ſaid, and for that that the foreſaid* I. *Clerk of* N. *hath the ſame name and ſirname as the foreſaid* I. *Clerk of* A. *to render us account of the iſſues foreſaid many ways to be diſquieted ye cauſe, leaſt juſtly as we have received, whereupon the ſame* I. *Clerk of* N. *hath ſupplicated us, that we would help him with remedy in this part, we as well for us, as for the foreſaid* I. *Clerk, what juſt ſhall be willing to be done in this part, command you, that if by any memorials of the ſaid Exchequer, or by inquiſition thereupon, if need it ſhall be to be taken, ye ſhall finde, him* I. *Clerk of* A. *our Commiſſioner of that Office to have had, and the iſſues thereof by pretence of this our Commiſſion, or in other manner to have received, and him* I. *Clerk of* N. *ſuch our Commiſſion not to have, nor himſelf thereupon in any wiſe to have intermedled, and him* I. *Clerk of* N. *for the identity of name and ſirname, and no other cauſe before you to have been impeached, then him* I. *Clerk of* N. *to render us account of the Iſſues foreſaid at the ſame Exchequer, or juſt it ſhall be, to be diſcharged, and quit cauſe ye, due Proces againſt the foreſaid* I. *Clerk of* A. *if alive he be, or againſt*

againſt his Heirs, Executors, or Tenants of the Lands and Tenements of him I. *Clerk of* A. *if he be dead, according to the exigent of the Law making. Witneſs, &c.*

And if a man be taken by a *Capias ut agatum*, he may B ſue forth a Writ *de Idemptitate nominis* in the Chancery directed to the Juſtices of the Common Pleas, if the Proces be ſued there, or unto the Juſtices of the Kings Bench, if the Proces be there, commanding them to make inquiry, *&c.* as afore is ſaid, *&c.* So as this Writ ſeemeth but as a Commiſſion to make inquiry, and to know the truth; and upon that Writ directed to the Juſtices, they ſhall award a Writ unto the Sheriff to make the Enquiry, *&c.* But if a man be outlawed in the Common Pleas, and taken by *Capias*, he may come into the Common Pleas, and pray a Writ of Enquiry whether he be the ſame perſon, without ſuing the Writ *de Idemptitate nominis*.

And if an *Exigent* be to be awarded againſt one, if one C who hath the ſame name, come and ſaith, that he is ready to anſwer, then the Plaintiff may ſay that he is not the ſame perſon, and then the Plaintiff ſhall put a diverſity of the Names, and the ſame ſhall be entred, and then the *Exigent* ſhall be awarded according to that difference which the Plaintiff hath made.

At the *Exigent* returned the Defendant appeareth by *Superſedeas*, and the Plaintiff ſaith, that he that appeareth is not the ſame perſon; and the opinion of *Hank* was, That he ſhall be put to his *Idemptitate nominis*, and ſhall not that way avoid the Outlawry.

And if an *Exigent* be to be awarded upon an Indictment if one come and ſaith, That he hath the ſame name as he againſt whom the Proces upon the Indictment is awarded, and prayeth that the Kings Attorney may put a difference of their names; the ſame ſhall not be done, for that ſhould change the Indictment, becauſe the Proces ought to be made according to the Indictment, and if he be grieved by the Proces, he muſt ſue forth the Writ *de Idemptitate nominis*, and ſhall not have other remedy, *&c.* And he may have that Writ to the Juſtices of the Peace, if they award Proces of *Utlagary* Indictments taken before them, and alſo to the Juſtices of Goal-delivery, appeareth by the Regiſter *Fol.* 195, 196.

Wri

Writ de Homagio reſpectuando.

A THe Writ of Reſpite of Homage lieth, when the heir comes of full age who holdeth of the King *in Capite*, and ought to ſue his Livery; then the Order is, That he firſt do Homage to the King, and thereupon to have his Writ of Livery to the Eſcheator: But the King of Grace and Favor may Reſpite his Homage as he pleaſeth; and thereupon he ſhall have a Writ unto the Eſcheator, teſtifying the ſame; and commanding him to deliver him ſeiſin of the Lands; and the Writ ſhall be ſuch.

The King to his beloved, &c. his Eſcheator, &c. Greeting. Know ye that we reſpite the homage of J. *Siſter, and heir of* I. *Sön, and heir of* T. *of* B. *deceaſed to us, of all the Lands and Tenements, which the foreſaid* I. *her Brother held of us in chief, the day he died, due, until the Feaſt of St.* Michael *next to come, and thoſe Lands and Tenements to her we have rendred; and therefore command you, that taking ſurety, &c.*

Writ de Hæretico comburendo.

B NOte, it appeareth by *Britton* in his Book, that thoſe perſons ſhall be burnt, who felonioufly burn others Corn, or other Houſes, and alſo thoſe who are Sorcerers or Sorcereſſes, and Sodomites and Hereticks ſhall be burnt, and it appeareth by that Book, *Lib.* 1. *cap.* 17. That ſuch was the Common Law. But note, that the perſon who ſhall be burnt for Hereſie, ought to be firſt convict thereof by the Biſhop, who is his Dioceſan where he dwelleth, and abjured thereof, and afterwards, if he Relapſe into that Hereſie, or any other, and thereof be condemned in the ſaid Dioceſs; then he ſhall be ſent from the Clergy to the Secular Power, to do with him as it ſhall pleaſe the King, *&c.* And then it ſeemeth the King, if he will, may pardon him the ſame, and the form of the Writ is ſuch.

The

The K. &c. to the Major and Sheriff of London, *Greeting. Whereas the venerable Father,* Thomas *Archbiſhop of* Canterbury, *Primate of all* England, *and Legate of the Sea Apoſtolick, of the Common Conſent, and Aſſent and Council of his Fellow Biſhops, and Fellow-Brothers his Suffragans, as alſo of the whole Clergy of his Province, in his Council Provincial aſſembled, the Orders of Law in this part requiſit in all things obſerved.* W. Sawtre *ſometime into Hereſie damnable, and by him* William *before in form of Law abjured, and him* William *to Hereſie foreſaid relapſed, by his Sentence definitive a manifeſt Hereſie pronounced, and declared, and to be degraded, hath decreed, and from all Prerogative and Priviledge Clerical, for that cauſe really hath degraded, and him* William *to the Court Secular hath decreed, to leave, and really left, according to the Laws and Canonical Sanctions in this part ſet forth, and holy Mother the Church, hath not farther to do in the premiſſes: We therefore zealous for Juſtice, and a lover of the Catholick Faith, willing holy Church and the Laws and Liberties of the ſame to maintain and defend; and ſuch Hereſies and Errors out of our Kingdom of* England (*as much as is in us*) *to extirpate by the Roots, and Hereticks ſo convict, with animadverſion condign to puniſh, and attending that ſuch Hereticks in the form foreſaid convict, and condemned, according to Law Divine and Humane, by Canonical Inſtitution, and in this part cuſtomed, ought to be burnt with fire. We command you ſtrictly as we can, firmly injoyning, That the foreſaid* W. *in your cuſtody, bring in ſome publick place, and open, within the Liberties of the City foreſaid for the cauſe*

premiſed,

premiſed, before the people publick to the fire ye commit, and him in the ſame fire really ye cauſe to be burnt in deteſtation of his crime, and to the manifeſt example of other Chriſtians; and this under the peril incumbent by no means omit ye. Witneſs, &c.

D And by that Writ it appeareth, That a man ought to be convicted of the Hereſie, by the Archbiſhop, and all the the Clergy of that Province, and abjured for the ſame, and afterwards new convict and condemned by the Clergy of the ſame Province, and that in their general Council of Convocation. But now by the Statute of *Hen.* 4. *cap* 15. it is enacted, That every Biſhop in his Dioceſs may convict a man of Hereſie, and abjure him, *&c.* And afterwards convict him anew thereof, and condemn him, and warn the Sheriff or other Officer to apprehend him, and burn him, *&c.* And that the Sheriff or other Officer ought to do the ſame, by the precept of the Biſhop, and without any Writ from the King to do the ſame. And that is the cauſe (as it ſeemeth) that that Writ is not put in the new Regiſters, becauſe that that Writ ought not at this day to be ſued forth, but is as it were void by reaſon of the ſaid Act.

But now by the Statute made 25 *Hen.* 8. 14. That Statute which was made in 2 *H.* 4. is repealed and made void; and now it is enacted by this late Statute, That he who is abjured for Hereſie, and afterwards falleth into Relapſe, and is convicted thereof before the Ordinary, That yet the Ordinary ought not for to commit him to the Lay Power to be burnt, without the Kings Writ firſt obtained for to burn him, as it appeareth by the Statute of 25 *H.* 8. cap. 140. more at large.

Writ upon the Statute of Marlbridge *for a Fine for not fair pleading.*

THE Writ upon the Statute of *Marlbridge* for not fair A
pleading, lyeth where the Sheriff or other Baily in his Court will take a Fine of the party, Plaintiff, or Defendant, becauſe he did not plead fairly, *&c.* and the Writ ſhall be directed to the Sheriff himſelf, or Baily, or him who will demand ſuch Fine; and it is a Prohibition to him, commanding him that he do not demand ſuch Fine, and it may be ſued by the whole Hundred, or by all the County together, where he will require ſuch manner of fine of them, and the Writ is ſuch.

The King to the Sheriff, &c. Whereas of the Common Coun- B
cel, &c. it is provided, That neither in the Eyres of Juſtice, nor in the County, Hundred, or Court Baron, hereafter Fines ſhall be taken for fair pleading, nor ſo that any occaſion ſhall be. We command thee, that from W. *ſuch Fine hereafter thou exact not, or cauſe to be exacted, againſt the form of the proviſion foreſaid, and the diſtreſs if any, &c.*

And for the Hundred the Writ ſhall be ſuch, *We command thee, that from the Commonalty of the Hundred of* L. *ſuch Fine hereafter thou exact not, or cauſe to be exacted againſt the form, &c.*

And by the Rule in the Regiſter, it may be againſt C
every other man who will diſtrein for ſuch Fine, and he may have an *Alias*, and a *Pluries*, and an Attachment upon the ſame; and if after the firſt Writ of Prohibition delivered, he diſtrein for ſuch Fine, then the party who is diſtreined, may ſue forth an Attachment againſt the Sheriff or Baily, or him who diſtreineth him, and the form of the Attachment is ſuch.

The King to his Coroners in the County of Lincoln, *Greeting. If* A. *ſhall, &c. then put ye, &c.* B. *our Sheriff, or our Sheriff of the County foreſaid, that he be before our Juſtices, &c. to ſhew, why whereas of the Common Councel, &c. to there, Fines be not taken of any, for fair pleading, nor ſo that any occaſion ſhall be, the ſame Sheriff, or the ſame* B. *hath diſtreined the foreſaid* A. *ſuch fine to pay in the County foreſaid, againſt*

the

the form of the proviſion foreſaid, and againſt our prohibition, and have there, &c. and the Beaſts of him A. on that occaſion taken; in the mean time thou cauſe to be delivered. Witneſs, &c.

But note, that he may ſue forth that Writ of Attachment againſt the Sheriff, or other, although that he never ſueth forth any Writ of Prohibition before directed to the Sheriff, or Baily, but then he ought for to be diſtreined for that Fine: For the Statute in it ſelf is a Prohibition to the Sheriff, and to all others, that they do not diſtrein for ſuch Fine for fair pleading; but if the Sheriff, or other demand ſuch Fine, and doth not diſtrein for the ſame, then he cannot have a Writ of Attachment for ſuch demand made, becauſe he is not damnified by the demand, *&c.* Attachment upon Prohibition, Br. 13. V. 9 H. 6. 61. & 19 H. 6. 54. *Aſcue.*

Grants made by the King expreſſed and contained the Regiſter, to be remembred.

D *THe King to his Bailies, and honeſt men of the Town of P. Greeting. Whereas of our Grace Special, we have granted to you for aid, to Pave your Town foreſaid, that from the day of the making of theſe preſents; to the end of five years next following fully to be compleated, ye ſhall take in the ſame Town the Cuſtoms underwritten, viz. Of every Horſe load, &c. And therefore we command you, That the Cuſtoms foreſaid to the end of the term foreſaid ye take, as foreſaid is, and that the term of five years compleat, the ſaid Cuſtoms altogether ceaſe, and be taken away. In teſtimony of which, &c.*

Grant

Grant of a Stewardſhip.

THe K. &c. Know ye that we have granted to our beloved E
and truſty W. of H. the Office and Government of the Seneſchalſie, &c. with all things to the ſaid Office belonging; and therefore we command you, That the ſame W. in all things as Seneſchal, ye obey, anſwer, and faithfully intend. Teſtimony of which, &c.

Grants of Letters Patents.

SEe in the Regiſter notable forms of Grants of Letters F
Patents made by the King in divers manners, eſpecially amongſt the Writs of *Ad quod damnum*, and alſo after the Writs *De Corodio habendo*, and there is a Patent made of the keeping of the Kings Foreſt in recompence of a certain ſum, &c.

And other Patents there made upon Indentures between the King, and others upon a borrowing of money by the King, by which Patent the King doth grant to hold and keep Covenant, &c.

The Grant of the King of the firſt Benefice, which ſhall happen void, is ſuch.

The King to his Chancellor who now is, or who for the time ſhall be, or to the Great Keeper of the Seal, greeting. The Petition of our beloved Clerk A. by pretence of his good ſervice as well to the Lord Edward, *ſometimes King of* England, *our Grand-father, as to us imployed, cordially affecting, and willing him from the premiſed conſideration to proſecute with our gracious favor, we will that the ſame A. to the firſt Benefice Eccleſiaſtick, the tax of twenty Marks exceed to be void, which to our Preſentation ſhall belong, and which he ſhall think fit to accept, be preſented; and therefore we command you, That to the ſame A. our Letters of Preſentation to the firſt benefice Eccleſiaſtick to be void, which to us ſhall belong, and which he ſhall think fit to accept, under the foreſaid our Great Seal, in form foreſaid ye cauſe to have, in teſtimony of which, &c. Witneſs, &c.*

But ſuch Grants are not in uſe at this day. A Grant of the King to one of his Chaplins of a yearly Penſion out of the Exchequer, until he be promoted unto a Benefice, is thus,

A *The King to all to whom, &c. Greeting, Attending the grateful, and praiſe-worthy ſervices which the ſaid* A. *our Clark, before theſe times willingly hath done us, whereof as well by our beloved and truſty Clark* W. *as by other our Feals, we are certainly informed, hoping, That in our buſineſſes in the purity of his affection, and good will, he will continue with ſucceſſive acts for the future, and willing to proſecute him with a gracious Gift, we have regranted to him a certain Annual Penſion of twenty Marks, to be taken every year at our Exchequer, at the Feaſts of* Eaſter, *and St.* Michael, *by equal portions, until he ſhall be provided by us, within our Realm of* England, *of a Benefice Eccleſiaſtical, which he ſhall think fit to accept. In teſtimony of which, &c.*

B There is another Grant in the Regiſter, *fol.* 295. made by the King to one to give him Authority, to reconcile the Kings enemies, who have left their Obedience, and adhered unto other the Kings enemies, *&c.* and to grant pardon to them; and the Grant is ſuch.

The King to all and ſingular, &c. to whom, &c. Greeting, Know ye that we of the approved fidelity, and provident circumſpection of our beloved and truſty Anthony Lucy, *fully confident, Have given the ſame* Anthony, *by tenor of theſe preſents, full power in our Name, to receive to our Faith and Peace, the men of* Galloway, *in the parts of* Scotland, *in our Faith, and Peace not being, and others; who to the ſame* Scots *againſt us, adhere, or have adhered, and with them againſt us, of our enmity were, and who to our Faith, and Peace will come, and whom to ſuch Faith and Peace you ſhall think fit to be admitted, and Letters of Pardon of the ſame adhering and enmity; as alſo of ſuch admiſſion to our Peace, to the ſame men for their ſecurity in this Plaint, in our Name, to be made firm and acceptable, to have whatſoever the ſame* Anthony *ſhall do in our Name in the premiſſes. In teſtimony of which, &c. witneſs, &c.*

There is another Grant made unto one of the Cuſtody, C
of a Caſtle, and the Ammunition therein, for a time it
ſhall pleaſe the King, and a Writ thereupon directed to
him who had the cuſtody thereof before, to deliver to him
the Caſtle, and the implements and things appertaining
to the ſame.

And you may ſee there the Patents made to Sheriffs, to D
be Sheriffs of the Counties, and alſo the Patents made to
the Eſcheators of the Counties; and alſo the Writs to the
old Sheriffs and Eſcheators to deliver unto them the Rolls
and Writs, *&c.*

And Letters Patents of Attendants unto Archbiſhops,
Abbots, and all others, to be Attendants unto them in
thoſe things which do appertain to their Office. The form
of Nomination to be made by the King to any Abbey, or
other perſon. Of one to be Vicar, and the Abbot do preſent
him over to the Ordinary. And alſo the form of Revocation
made by the King, of that Nomination; and alſo the form
of the Writ which the King ſends to the Ordinary to admit
of that Revocation, and to admit another perſon, by an-
other Nomination, do all appear in the Regiſter. *Fol.* 302.

And divers other Preſentations made by the King, and
alſo Revocations of his Preſentation; and alſo Nominati-
ons made by the King in his own Right, or on the Right
of others, are there in the Regiſter: And Grants made by
the King of Donatives, and the Writs directed unto the
Sheriffs to put them in poſſeſſion: And Writs there to the
Ordinary to aſſign unto a Prebendary *Stat. in Choro, & lo-
cum in capitulo*, who hath the Prebend by the Kings Colla-
tion: And divers Ratifications there made by the King to
divers Incumbents of Churches, or Prebends, which they
have in poſſeſſion as Incumbents, *&c.*

And many forms of Writs made to Abbots or Biſhops, to E
have yearly Penſion for his Chaplains, until they are pro-
moted to Benefices: And the Writ to the Chancellor to
preſent in the Kings Name, ſuch a one the Kings Chaplain,
to the firſt avoidance of any Benefice which ſhall be void,
which appertains to the King. And alſo grants by the King
to receive yearly a penſion out of the Exchequer.

And divers forms of Writs of Proxy are in the Regiſter, F
to ſue, defend, or anſwer, *&c.* or to reſign a Benefice, *&c.*
And the form of the Reſignation, *&c.* And the form to

make

make Proteſtation, when a man will reſign his Benefice, *&c.* appear in the end of the Regiſter, in *fol.* 302. and in other folio's there following.

And ſo endeth this preſent Treatiſe, called, New Natura Brevium; *which Book fully declares the Natures of the Original writs contained and expreſſed in the Regiſter.*

FINIS.
